

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-43-641 (Public Employees' Retirement Board) Notice of Proposed Amendment - Application Process for Disability Benefits. No Public Hearing Contemplated.	1201-1203
---	-----------

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-614 (Fish and Wildlife Commission) Second Notice of Public Hearing on Proposed Adoption and Amendment - Grizzly Bears.	1204-1211
---	-----------

ENVIRONMENTAL QUALITY, Department of, Title 17

17-432D Notice of Proposed Amendment - Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality. No Public Hearing Contemplated.	1212-1227
--	-----------

17-433 Notice of Public Hearing on Proposed Adoption and Amendment - Montana Ground Water Pollution Control System Permits.	1228-1239
---	-----------

LABOR AND INDUSTRY, Department of, Title 24

24-17-407 Notice of Public Hearing on Proposed Amendment - Prevailing Wages.	1240-1242
24-156-97 (Board of Medical Examiners) Notice of Public Hearing on Proposed Repeal - Supervision of Physician Assistant.	1243-1244
24-189-44 (Board of Psychologists) Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Board of Psychologists.	1245-1266
24-222-29 (Board of Speech-Language Pathologists and Audiologists) Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Board of Speech-Language Pathologists and Audiologists.	1267-1281

LIVESTOCK, Department of, Title 32

32-23-342 Notice of Proposed Amendment – Testing Within the DSA. No Public Hearing Contemplated.	1282-1283
32-23-343 Notice of Proposed Repeal – Garbage Feeding. No Public Hearing Contemplated.	1284-1286
32-23-344 Notice of Proposed Amendment – Animal Health Division Fees. No Public Hearing Contemplated.	1287-1289

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-220 (Board of Oil and Gas Conservation and the Department) Notice of Proposed Amendment - Adoption of Forms - Reports by Producers, Tax Report, and Tax Rate. No Public Hearing Contemplated.	1290-1291
---	-----------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-1039 Notice of Public Hearing on Proposed Amendment - Chemical Dependency Programs and Medicaid Mental Health Services.	1292-1296
37-1044 Notice of Public Hearing on Proposed Adoption and Repeal - Licensure of Day Care Facilities.	1297-1393

SECRETARY OF STATE, Office of, Title 44

44-2-266 (Office of the Commissioner of Political Practices) Notice of Proposed Amendment - Contribution Limits. No Public Hearing Contemplated. 1394-1396

RULE ADOPTION SECTION

STATE AUDITOR, Office of, Title 6

6-280 (Commissioner of Securities and Insurance) Notice of Amendment - Continuing Education Program for Insurance Producers and Consultants. 1397

6-281 (Commissioner of Securities and Insurance) Notice of Adoption - Regulatory Sandbox Waivers. 1398-1400

6-282 (Commissioner of Securities and Insurance) Notice of Transfer - Network Adequacy for Managed Care Plans. 1401-1402

6-283 (Commissioner of Securities and Insurance) Notice of Transfer - Quality Assurance for Managed Care Plans. 1403-1404

COMMERCE, Department of, Title 8

8-111-202 Notice of Amendment and Repeal - Board of Housing Temporary Assistance to Needy Families (TANF) and Coal Trust Multifamily Homes Loan Programs. 1405

TRANSPORTATION, Department of, Title 18

18-196 Notice of Amendment - Overdimensional Permit Requirements. 1406

LABOR AND INDUSTRY, Department of, Title 24

24-156-95 (Board of Medical Examiners) Notice of Amendment, Adoption, and Repeal - General Revisions. 1407-1409

24-156-96 (Board of Medical Examiners) Notice of Amendment and Repeal - Montana Health Corps. 1410-1411

24-160-1 Notice of Adoption - Pediatric Complex Care Assistant License. 1412-1413

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	1414-1415
How to Use ARM and MAR.	1416
Recent Rulemaking.	1417-1422
Executive Branch Appointees.	1423-1425
Executive Branch Vacancies.	1426-1427

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.2602 pertaining to the	)	AMENDMENT
application process for disability	)	
benefits	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 2, 2024, the Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on November 10, 2023, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvlastic@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.2602 APPLICATION PROCESS FOR DISABILITY BENEFITS (1) All forms necessary to apply for disability benefits may be obtained ~~from~~ by contacting MPERA.

(2) through (2)(b) remain the same.

(c) attending physician's statements, ~~including and~~ all medical records specific to the claimed disabling conditions ~~required to substantiate a disability claim;~~

(d) and (e) remain the same.

(3) If MPERA or the board's medical consultant requests that an applicant complete an application package or requests additional medical documentation, all requested information must be received within 90 days or the application may be administratively closed unless the applicant is unable to provide the requested information due to a disabling condition.

(4) MPERA requires documentation from specialists when an applicant alleges certain disabling conditions:

(a) mental or emotional disorders require a report from a psychiatrist or a minimum of one report each from a psychologist and a medical physician;

(b) orthopedic conditions require a report from a treating or consulting orthopedic specialist or orthopedic surgeon; and

(c) neurological conditions require a report from a treating or consulting neurologist or neurosurgeon.

(3) through (5) remain the same but are renumbered (5) through (7).

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA

IMP: 19-2-406, 19-3-1002, 19-3-2141, 19-5-601, 19-6-601, 19-7-601, 19-8-701, 19-9-902, 19-13-802, MCA

REASON: The proposed amendments are intended to address two ongoing issues with the disability retirement application process: 1) incomplete or partial applications where the applicant does not respond to requests for information for long periods of time; and 2) the submission of applications that do not include medical documentation from specialists in the area of the applicant's claimed disabling condition. The proposed amendments seek to make the disability retirement application process more predictable for the applying retirement system member, reduce the overall application processing time, and reduce the number of applications that are initially denied by the board due to insufficient medical evidence.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., November 17, 2023.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 7,817 persons based on approximately 78,167 defined benefit retirement plan members as of June 30, 2023.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be

made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State October 10, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) SECOND NOTICE OF PUBLIC
RULES I through XIII and the) HEARING ON PROPOSED
amendment of ARM 12.9.1401) ADOPTION AND AMENDMENT
pertaining to grizzly bears)

TO: All Concerned Persons

1. On September 22, 2023, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-614 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 1043 of the 2023 Montana Administrative Register, Issue Number 18. Thereafter, Montana Fish, Wildlife and Parks (FWP) became aware that there was a clerical error excluding the date and manner in which the primary sponsor for Senate Bill 295 was contacted. This second notice is being published to comply with the requirements of 2-4-302, MCA. No changes have been made to the rule language from the original proposal notice.

2. On November 17, 2023, at 9:00 a.m., the commission will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed adoption and amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: +1 206 337 9723
Meeting ID: 819 7121 7560
Passcode: 141764

3. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact FWP no later than 5:00 p.m., on November 3, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

4. The rules as proposed to be adopted provide as follows:

NEW RULE I (ARM 12.9.1404) DEFINITIONS (1) "Authorized person" means any individual given written or verbal authority by the livestock owner, or who is authorized by name on a permit to take a grizzly bear. This does not include department staff or wildlife services' staff.

(2) "Confirmed grizzly bear mortality" means a situation where a grizzly bear carcass is present.

(3) "Demographic monitoring area" or "DMA" is the area within which the grizzly bear population is monitored, where population estimates are derived, and within which the mortality threshold will apply.

(4) "Department" means Montana Fish, Wildlife and Parks.

(5) "Department director" means Montana, Fish, Wildlife and Parks' director or the director's designee.

(6) "Investigate" or "investigation" means a fact-gathering and analytical activity conducted to determine the facts relating to a reported incident and to assess a fitting non-lethal or lethal management response.

(7) "Non-lethal measures" means actions that are not intended to injure or kill a grizzly bear.

(8) "Preventative measures" means actions that are intended to prevent or reduce conflict.

(9) "Probable grizzly bear mortality" means a situation where there is sufficient evidence of grizzly bear blood, hair, and other grizzly bear tissues, to support a finding of death.

(10) "Take" or "taken" means the killing of a grizzly bear by firearm.

(11) "Wildlife services" means the United States Department of Agriculture – Animal and Plant Health Inspection Service.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE II (ARM 12.9.1405) GRIZZLY BEAR MANAGEMENT

OBJECTIVE (1) The department will implement management strategies to ensure that grizzly bears continue to thrive and are integrated as a valuable part of Montana's wildlife heritage. The department will manage grizzly bears to ensure that recovery is maintained. The department's grizzly bear management objective is to maintain and enhance Montana's contribution to the grizzly bear population in the lower-48 states and the grizzly bear's connectivity between populations in and outside Montana.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE III (ARM 12.9.1406) THE QUOTA AND ESTABLISHING AND ADJUSTING THE QUOTA

(1) For each delisted ecosystem, the commission will establish an annual quota for the number of delisted grizzly bears that may be taken by a livestock owner or other authorized person, whether permitted or not, pursuant to 87-5-301, MCA. The commission shall consider relevant factors, including information provided to the commission by the department in the grizzly bear annual report, the most recent grizzly bear population estimate, the mortality threshold, and previous quotas.

(2) Grizzly bears taken by the department, wildlife services, or an individual person in self-defense do not count towards the quota.

(3) Information concerning the quota will be made public via the department's website.

(4) When the quota is met, the department will make a public announcement, via its webpage and social media page. The quota will officially close at 11:59 p.m., the same day the department's notice is made.

(5) Any individual who takes a grizzly bear after the quota is closed may be subject to criminal penalties, pursuant to 87-6-201, 87-6-413, 87-6-905, and 87-6-907, MCA, as applicable, and the deceased bear(s) will be recognized in determining the next year's available quota.

(6) If the commission determines that circumstances require an adjustment to the total number of grizzly bears taken, pursuant to 87-5-301(3), MCA, then it may, at any time prior to the quota being met, adjust the quota.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE IV (ARM 12.9.1407) THE MORTALITY THRESHOLD (1) The mortality threshold(s) is/are the maximum annual number of grizzly bear mortalities, within the DMA, that the population(s) can withstand without falling below recovery levels.

(2) All grizzly bear mortalities within the DMA will count toward the relevant mortality threshold(s).

(3) Information concerning the mortality threshold will be made public via the department's website.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE V (ARM 12.9.1408) GRIZZLY BEAR MORTALITIES THAT APPLY TO THE QUOTA AND THE MORTALITY THRESHOLD (1) A delisted grizzly bear taken within the DMA, pursuant to 87-5-301(3) and (4), MCA, counts towards the quota and the relevant mortality threshold.

(2) The quota and the total mortalities counted towards the mortality threshold include confirmed or probable grizzly bear mortalities.

(3) If a female grizzly bear with a cub or cubs of the year is taken, both the female grizzly bear and the cub(s) will count towards the quota. If the mortalities are within the DMA, they will also count towards the mortality threshold.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VI (ARM 12.9.1409) IF A DELISTED GRIZZLY BEAR POPULATION OVERLAPS TWO OR MORE STATES (1) If a delisted grizzly bear population overlaps two or more states, the mortality threshold will be apportioned by a percentage allocated to each state involved, and the quota will consider the percentage allocated to Montana.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VII (ARM 12.9.1410) ALLOWABLE LETHAL MANAGEMENT OF THE GRIZZLY BEAR (1) The commission authorizes the department to use lethal control of depredating grizzly bears.

(2) Pursuant to 87-5-301(3), MCA, a livestock owner or other authorized person may take, without a permit or license, a grizzly bear that is attacking or killing livestock. Take by a livestock owner or other authorized person is limited to those areas that a livestock owner's livestock are legally authorized to be.

(3) Pursuant to 87-5-301(4) and 87-6-106(4), MCA, the department director may issue a permit to a person, livestock owner, or other authorized person to take a grizzly bear, under the following circumstances and conditions:

(a) when the department makes the determination that the grizzly bear is threatening livestock or poses a threat to humans;

(b) when the department makes the determination that the grizzly bear was not purposefully or intentionally fed or baited; and

(c) when the bear is threatening livestock on public land, and the livestock owner has demonstrated an effort to utilize non-lethal measures as determined by the department director or designee.

(4) A permit issued pursuant to 87-5-301(4) and 87-6-106(4), MCA, to a person, livestock owner, or other authorized person must identify the following:

(a) the permittee's name;

(b) the permit's duration and expiration date;

(c) the geographic area the permit is valid;

(d) the rationale for issuing the permit; and

(e) that the permit is applicable to one delisted grizzly bear.

(5) If a person, livestock owner, or other authorized person, whether permitted or not, takes or injures a grizzly bear, pursuant to 87-5-301(3) and (4) or 87-6-106(4), MCA, they shall:

(a) notify the department within 24 hours;

(b) leave the grizzly bear carcass, if any, where it lay;

(c) preserve the area the shot was taken from;

(d) preserve the area surrounding the grizzly bear carcass, if any; and

(e) surrender the grizzly bear carcass, if any, to the department.

(6) A person, livestock owner, or other authorized person, who purposefully injures or kills a grizzly bear by any other means, besides a firearm, is subject to criminal penalties, pursuant to 87-6-201, MCA.

(7) Pursuant to 87-5-301(4)(b) and 87-6-106(4), MCA, the department has the discretion to lethally remove a grizzly bear. If a grizzly bear is lethally removed by department or wildlife services' staff, after conducting an on-site investigation, the grizzly bear does not count towards the quota. However, if the lethal removal occurred inside of the DMA, the grizzly bear will count towards the mortality threshold.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VIII (ARM 12.9.1411) ALLOWABLE NON-LETHAL MEASURES OR PREVENTATIVE MEASURES OF THE GRIZZLY BEAR (1) As allowed by 87-5-301 and 87-6-106(4), MCA, control of the grizzly bear includes a variety of non-lethal measures or preventative measures intended to decrease risk of, prevent, or resolve a conflict without killing the grizzly bear in question. Allowable non-lethal measures or preventative measures include, but are not limited to:

- (a) husbandry practices, including, but not limited to, electric fencing, increased human presence, herding, or guarding animals, night pens, carcass removal, alternative pastures, amended pasture or grazing rotations, or supplemental feed;
- (b) the department's placement of a radio collar to facilitate increased monitoring of the grizzly bear;
- (c) hazing in a non-injurious manner;
- (d) intentional harassment;
- (e) electric fencing of bone yards;
- (f) working with interested individual livestock owners and private landowners, watershed groups, interested groups, and state and federal land managing agencies to provide technical assistance and to assist with selection and implementation of proactive non-lethal controls on both public and private lands when and where livestock are present, either seasonally or yearlong; and
- (g) the department's capture and relocation of the grizzly bear.

AUTH: 87-1-201, 87-1-301, MCA
IMP: 87-5-301, 87-6-106, MCA

NEW RULE IX (ARM 12.9.1412) BAITING GRIZZLY BEARS AND NORMAL LIVESTOCK OPERATIONS (1) A person may not intentionally bait a grizzly bear. Normal livestock operations are not considered baiting.

AUTH: 87-1-201, 87-1-301, MCA
IMP: 87-5-301, MCA

NEW RULE X (ARM 12.9.1413) REQUIREMENT TO MANAGE ANY DELISTED GRIZZLY BEAR POPULATION FOR FIVE YEARS PRIOR TO A HUNTING OR HARVEST SEASON (1) The department shall manage any delisted grizzly bear population for five years prior to proposing any hunting season or harvest for grizzly bears.

AUTH: 87-1-201, 87-1-301, MCA
IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XI (ARM 12.9.1414) GRIZZLY BEAR ANNUAL REPORT
(1) The department shall generate and publish a grizzly bear annual report starting the first year after either the Northern Continental Divide Ecosystem or the Greater Yellowstone Ecosystem is delisted and will continue thereafter.
(2) The grizzly bear annual report will include:

- (a) the population estimate and previous year's mortalities for delisted populations;
- (b) the methods used by department personnel to monitor grizzly bears and develop population estimates;
- (c) information concerning connectivity and genetic exchange between the Northern Continental Divide Ecosystem and the Greater Yellowstone Ecosystem;
- (d) description of mortality sources and potential for future population level impacts;
- (e) the number, types, and locations of human-bear conflicts; and
- (f) outreach and education efforts made by the department.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XII (ARM 12.9.1415) GENETIC AND POPULATION

AUGMENTATION (1) Upon delisting, the department shall continue to translocate grizzly bears between the Northern Continental Divide Ecosystem, the Greater Yellowstone Ecosystem, and other grizzly bear populations for genetic and population augmentation. The department will continue to conduct genetic sampling, as necessary, when handling bears, and will analyze those samples to evaluate genetic diversity and connectivity between populations and the need for continued efforts.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XIII (ARM 12.9.1416) DATE OF EFFECT AND APPLICABILITY

(1) [NEW RULES I through XIII] only apply to grizzly bear populations that have been delisted by the United States Fish and Wildlife Service and take effect upon the date that said populations are delisted and no longer subject to federal jurisdiction under the Endangered Species Act, 16 U.S.C. 1531, et seq.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, MCA

REASON: The department is proposing the new rules, mentioned above, to adhere to the requirements of Senate Bill 295 (2023 Legislature) and to further clarify how Montana will manage delisted grizzly bears for human safety, conflict with livestock, and genetic exchange.

5. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.9.1401 GRIZZLY BEAR POLICY (1) through (1)(b) remain the same.

(c) Hunting and recreational use. The commission recognizes its responsibility to consider and provide for recreational opportunities as part of a grizzly bear management program. These opportunities shall include: sport hunting,

when deemed appropriate; recreational experiences; aesthetics of natural ecosystems; and other uses consistent with the overall welfare of the species.

(i) through (d)(iii) remain the same.

(iv) Grizzly bears ~~committing depredations~~ that do not directly endanger human life but that are causing non-livestock related property losses shall be evaluated on an individual case basis.

(v) through (f) remain the same.

AUTH: 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

REASON: The department is proposing amendments to this rule to better reflect current practices and to conform with its obligation to manage a delisted grizzly bear population for five years post-delisting prior to instituting a hunting season.

6. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Wildlife Division, ATTN: Grizzly Bear ARM, Montana Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail fwpwld@mt.gov, and must be received no later than November 20, 2023.

7. Christina Bell or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to cbell@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply. The department contacted Senate Bill 295's primary sponsor, Senator Bruce Gillespie, on April 14, 2023, June 20, 2023, and June 28, 2023, via email. Senator Gillespie did not provide any substantive feedback or comments regarding the draft rule language. The department further contacted Senator Gillespie on September 28, 2023, via phone, and October 5, 2023, via email. In the October 5, 2023, correspondence, Senator Gillespie was informed of the Secretary of State process, which identified the new hearing date and the deadline to submit comment(s).

10. With regard to the requirements of 2-4-111, MCA, the commission has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
17.24.624, 17.24.625, 17.24.626,	)	AMENDMENT
17.24.631, 17.24.632, 17.24.633,	)	
17.24.634, 17.24.635, 17.24.636,	)	NO PUBLIC HEARING
17.24.637, 17.24.638, 17.24.639,	)	CONTEMPLATED
17.24.640, 17.24.641, 17.24.642,	)	
17.24.643, 17.24.644, 17.24.645,	)	
17.24.646, 17.24.647, 17.24.648,	)	
17.24.649, 17.24.650, 17.24.651,	)	
17.24.652, 17.24.701, 17.24.702,	)	
17.24.703, 17.24.711, 17.24.713,	)	
17.24.714, 17.24.716, 17.24.717,	)	
17.24.718, 17.24.721, 17.24.723,	)	
17.24.724, 17.24.725, 17.24.726,	)	
17.24.731, 17.24.751, 17.24.761,	)	
17.24.762, 17.24.764, 17.24.801,	)	
17.24.802, 17.24.804, 17.24.805,	)	
17.24.806, 17.24.811, 17.24.815,	)	
17.24.821, 17.24.823, 17.24.831,	)	
17.24.832, 17.24.833, 17.24.834,	)	
17.24.835, 17.24.836, 17.24.837,	)	
17.24.901, 17.24.902, 17.24.903,	)	
17.24.904, 17.24.907, 17.24.911,	)	
17.24.912, 17.24.920, 17.24.924,	)	
17.24.925, 17.24.926, 17.24.927,	)	
17.24.930, 17.24.932, 17.24.1001,	)	
17.24.1002, 17.24.1003, 17.24.1004,	)	
17.24.1005, 17.24.1006, 17.24.1007,	)	
17.24.1008, 17.24.1009, 17.24.1010,	)	
17.24.1011, 17.24.1012, 17.24.1013,	)	
17.24.1014, 17.24.1016, 17.24.1017,	)	
17.24.1101, 17.24.1102, 17.24.1104,	)	
17.24.1105, 17.24.1106, 17.24.1107,	)	
17.24.1108, 17.24.1109, 17.24.1110,	)	
and 17.24.1111 pertaining to transfer of	)	
rulemaking authority from the Board of	)	
Environmental Review to the	)	
Department of Environmental Quality	)	

TO: All Concerned Persons

1. On February 9, 2024, the Department of Environmental Quality (department) proposes to amend the above-stated rules. The department will be

submitting a total of five notices for this rulemaking under MAR Notice No. 17-432; this is the fourth of the five.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on November 27, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking@mt.gov.

3. General Reason Statement: During the 2021 legislative session, the legislature passed Senate Bill 233. Senate Bill 233 reassigned and transferred the rulemaking duties and powers of the Board of Environmental Review to the department. In addition, Senate Bill 233 repealed 75-6-103, 75-10-106, 82-4-111, and 82-4-204, MCA. Through this rulemaking, the department will be implementing the 2021 changes to rulemaking authority by striking "board" and changing it to "department." The department will also update the citations to the MCA sections that have been repealed by Senate Bill 233. The department is making these changes to implement the 2021 statute and clarify the change of authority to make it easier for the general public and the regulated community to determine the appropriate process and entity for future rulemakings.

4. The department proposes to amend the following rules, new matter underlined, deleted matter interlined. Please refer to the General Reason Statement above.

17.24.624 SURFACE BLASTING REQUIREMENTS (1) through (14) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.625 SEISMOGRAPH MEASUREMENTS (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.626 RECORDS OF BLASTING OPERATIONS (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.631 GENERAL HYDROLOGY REQUIREMENTS (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.632 PERMANENT SEALING OF DRILLED HOLES (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.633 WATER QUALITY PERFORMANCE STANDARDS (1) through (5) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.634 RECLAMATION OF DRAINAGE BASINS (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.635 GENERAL REQUIREMENTS FOR TEMPORARY AND PERMANENT DIVERSION OF OVERLAND FLOW, THROUGH FLOW, SHALLOW GROUND WATER FLOW, EPHEMERAL DRAINAGEWAYS, AND INTERMITTENT AND PERENNIAL STREAMS (1) through (5) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.636 SPECIAL REQUIREMENTS FOR TEMPORARY DIVERSIONS (1) through (6) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.637 SPECIAL REQUIREMENTS FOR PERMANENT DIVERSIONS (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.638 SEDIMENT CONTROL MEASURES (1) and (2) remain the same.

AUTH: 82-4-202, ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, 82-4-234, MCA

17.24.639 SEDIMENTATION PONDS AND OTHER TREATMENT FACILITIES (1) through (28) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.640 DISCHARGE STRUCTURES (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.641 ACID- AND TOXIC-FORMING SPOILS Drainage from acid- and toxic-forming spoil into ground and surface water must be avoided by:
(1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.642 PERMANENT IMPOUNDMENTS AND FLOOD CONTROL IMPOUNDMENTS (1) through (7) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.643 GROUND WATER PROTECTION (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.644 PROTECTION OF GROUND WATER RECHARGE (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.645 GROUND WATER MONITORING (1) through (8) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.646 SURFACE WATER MONITORING (1) through (7) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.647 TRANSFER OF WELLS (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, 82-4-231, MCA

17.24.648 WATER RIGHTS AND REPLACEMENT (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-253, MCA

17.24.649 DISCHARGE OF WATER INTO UNDERGROUND MINES
(1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.650 POSTMINING REHABILITATION OF SEDIMENTATION PONDS,
DIVERSIONS, IMPOUNDMENTS, AND TREATMENT FACILITIES (1) and (2)
remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.651 STREAM CHANNEL DISTURBANCES AND BUFFER ZONES
(1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, MCA

17.24.652 WELLS AND UNDERGROUND OPENINGS: SAFETY
(1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, MCA

17.24.701 REMOVAL OF SOIL (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-231, MCA
IMP: 82-4-232, MCA

17.24.702 REDISTRIBUTION AND STOCKPILING OF SOIL (1) through (7)
remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.703 SUBSTITUTION OF OTHER MATERIALS FOR SOIL (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-231, MCA
IMP: 82-4-232, MCA

17.24.711 ESTABLISHMENT OF VEGETATION (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

17.24.713 TIMING OF SEEDING AND PLANTING (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-234, 82-4-235, MCA

17.24.714 SOIL STABILIZING PRACTICES (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

17.24.716 METHOD OF REVEGETATION (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

17.24.717 PLANTING OF TREES AND SHRUBS (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

17.24.718 SOIL AMENDMENTS, MANAGEMENT TECHNIQUES, AND LAND USE PRACTICES (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

17.24.721 ERADICATION OF RILLS AND GULLIES (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-233, 82-4-235, MCA

17.24.723 MONITORING (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-233, 82-4-235, MCA

17.24.724 REVEGETATION SUCCESS CRITERIA (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-233, 82-4-235, MCA

17.24.725 PERIOD OF RESPONSIBILITY (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-233, 82-4-235, MCA

17.24.726 VEGETATION MEASUREMENTS (1) through (6) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-233, 82-4-235, MCA

17.24.731 ANALYSIS FOR TOXICITY (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-233, 82-4-235, MCA

17.24.751 PROTECTION AND ENHANCEMENT OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.761 AIR RESOURCES PROTECTION (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-231, MCA

17.24.762 POSTMINING LAND USE (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-232, MCA

IMP: 82-4-233, MCA

17.24.764 CROPLAND RECLAMATION (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-233, 82-4-235, MCA

17.24.801 ALLUVIAL VALLEY FLOORS: PRESERVATION OF ESSENTIAL HYDROLOGIC FUNCTIONS AND PROTECTION OF FARMING (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.802 ALLUVIAL VALLEY FLOORS: PROTECTION OF FARMING AND PREVENTION OF MATERIAL DAMAGE (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.804 ALLUVIAL VALLEY FLOORS: MONITORING (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.805 ALLUVIAL VALLEY FLOORS: SIGNIFICANCE DETERMINATION (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.806 ALLUVIAL VALLEY FLOORS: MATERIAL DAMAGE DETERMINATION Criteria for determining whether a strip or under-ground coal mining operation will materially damage the quantity or quality of waters include, but are not limited to:

(1) through (5) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.811 PRIME FARMLAND: SOIL HANDLING (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-232, MCA

17.24.815 PRIME FARMLAND: REVEGETATION (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-232, MCA

17.24.821 ALTERNATIVE POSTMINING LAND USES: SUBMISSION OF PLAN (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-232, MCA
IMP: 82-4-233, MCA

17.24.823 ALTERNATIVE POSTMINING LAND USES: APPROVAL OF PLAN (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-232, MCA

17.24.831 AUGER MINING: GENERAL REQUIREMENTS (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, 82-4-233, MCA

17.24.832 AUGER MINING: SPECIFIC PERFORMANCE STANDARDS (1) through (7) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, 82-4-233, MCA

17.24.833 AUGER MINING: REQUIREMENTS FOR PERMIT (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-231, 82-4-232, 82-4-233, MCA

17.24.834 REMINING: APPLICABILITY (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-203, MCA

17.24.835 REMINING: APPLICATION AND OPERATING REQUIREMENTS (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-221, 82-4-222, 82-4-231, 82-4-232, MCA

17.24.836 REMINING: ELIGIBILITY FOR ABANDONED MINE LAND STATUS (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-239, 82-4-242, MCA

17.24.837 REMINING: BONDING (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, MCA

17.24.901 GENERAL APPLICATION AND REVIEW REQUIREMENTS
(1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-222, MCA

17.24.902 APPLICATION REQUIREMENTS FOR IN SITU COAL
PROCESSING OPERATIONS (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-207, MCA
IMP: 82-4-222, MCA

17.24.903 GENERAL PERFORMANCE STANDARDS (1) and (2) remain
the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-207, MCA;
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, 82-4-243, 82-4-253, MCA

17.24.904 IN SITU COAL PROCESSING OPERATION PERFORMANCE
STANDARDS (1) through (6) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.907 IN SITU URANIUM PROCESSING OPERATION
PERFORMANCE STANDARDS (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.911 SUBSIDENCE CONTROL (1) through (10) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, 82-4-231, MCA
IMP: 82-4-227, 82-4-231, 82-4-243, MCA

17.24.912 BUFFER ZONES (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-227, 82-4-231, MCA

17.24.920 PLACEMENT AND DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: SPECIAL APPLICATION REQUIREMENTS (1) and (2) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~, MCA
IMP: ~~82-4-222~~, MCA

17.24.924 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: GENERAL REQUIREMENTS (1) through (20) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~, MCA
IMP: ~~82-4-227~~, ~~82-4-231~~, ~~82-4-232~~, ~~82-4-233~~, MCA

17.24.925 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: VALLEY FILL (1) through (5) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~(10)(h), MCA
IMP: ~~82-4-227~~, ~~82-4-231~~, ~~82-4-232~~, ~~82-4-233~~, MCA

17.24.926 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: HEAD-OF-HOLLOW FILL (1) and (2) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~, MCA
IMP: ~~82-4-227~~, ~~82-4-231~~, ~~82-4-232~~, ~~82-4-233~~, MCA

17.24.927 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE: DURABLE ROCK FILLS (1) through (7) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~, MCA
IMP: ~~82-4-227~~, ~~82-4-231~~, ~~82-4-232~~, ~~82-4-233~~, MCA

17.24.930 PLACEMENT AND DISPOSAL OF COAL PROCESSING WASTE: SPECIAL APPLICATION REQUIREMENTS (1) through (3) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~, MCA
IMP: ~~82-4-222~~, MCA

17.24.932 DISPOSAL OF COAL PROCESSING WASTE (1) through (10) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, ~~82-4-231~~, MCA
IMP: ~~82-4-227~~, ~~82-4-231~~, ~~82-4-232~~, ~~82-4-233~~, MCA

17.24.1001 PERMIT REQUIREMENT (1) through (7) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, MCA
IMP: ~~82-4-226~~, MCA

17.24.1002 INFORMATION AND MONTHLY REPORTS (1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, MCA

17.24.1003 RENEWAL AND TRANSFER OF PERMITS (1) through (4) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, MCA
IMP: 82-4-226, MCA

17.24.1004 ENVIRONMENTAL MONITORING (1) remains the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, MCA
IMP: 82-4-226, MCA

17.24.1005 DRILL HOLES (1) through (4) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, MCA
IMP: 82-4-226, MCA

17.24.1006 ROADS AND OTHER TRANSPORTATION FACILITIES (1) through (3) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1007 GRADING, SOIL SALVAGE, STORAGE AND REDISTRIBUTION (1) and (2) remain the same.

AUTH: ~~82-4-204~~, ~~82-4-205~~, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1008 REVEGETATION After soil has been replaced in disturbed areas, appropriate legumes, forbs, grasses, shrubs, and trees must be established unless otherwise approved by the department. The revegetation must form a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of the land affected and be capable of:
(1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1009 DIVERSIONS (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1010 REMOVAL OF EQUIPMENT All equipment and facilities must be promptly removed from the prospecting area when no longer needed for exploration or reclamation, except for equipment and facilities that the department determines may remain to:

(1) through (3) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1011 HYDROLOGIC BALANCE (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1012 TOXIC- OR ACID-FORMING MATERIALS (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1013 DRILLING If drilling is proposed, the prospecting plan must comply with the following:

(1) through (5) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, 82-4-231, 82-4-232, 82-4-233, MCA

17.24.1014 TEST PITS: APPLICATION REQUIREMENTS, REVIEW PROCEDURES, BONDING, AND ADDITIONAL PERFORMANCE STANDARDS
(1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-226, MCA

17.24.1016 BOND REQUIREMENTS FOR DRILLING OPERATIONS
(1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, 82-4-226, MCA

17.24.1017 BOND RELEASE PROCEDURES FOR DRILLING OPERATIONS (1) through (7) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-226, 82-4-232, 82-4-235, MCA

17.24.1101 BONDING: DEFINITIONS For purposes of this rule, the following definitions apply:

(1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1102 BONDING: DETERMINATION OF BOND AMOUNT The standard applied by the department in determining the amount of performance bond is the estimated cost to the department if it had to perform the reclamation, restoration, and abatement work required of an operator or a prospecting permittee under the Act, the rules adopted thereunder, and the permit. This amount is based on, but not limited to:

(1) through (5) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1104 BONDING: ADJUSTMENT OF AMOUNT OF BOND (1) through (5) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1105 BONDING: FORM OF BOND The form for the performance bond must be as provided by the department. The department shall allow for either: (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1106 BONDING: TERMS AND CONDITIONS OF BOND (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1107 BONDING: INCAPACITY OF SURETY (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA

IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1108 BONDING: CERTIFICATES OF DEPOSIT (1) through (4) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1109 BONDING: LETTERS OF CREDIT (1) remains the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1110 BONDING: REPLACEMENT OF BOND (1) and (2) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

17.24.1111 BONDING: BOND RELEASE APPLICATION CONTENTS
(1) through (7) remain the same.

AUTH: ~~82-4-204~~, 82-4-205, MCA
IMP: 82-4-223, 82-4-232, 82-4-235, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-432rulemaking @mt.gov, and must be received no later than 11:59 p.m., December 1, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., November 23, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 259 persons based on the interested parties list of 2,591 individuals.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 5, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Angela Colamaria
ANGELA COLAMARIA
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environment Quality

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULE I and NEW RULE II and the	)	PROPOSED ADOPTION AND
amendment of ARM	)	AMENDMENT
17.30.1001, 17.30.1005, 17.30.1010,	)	
17.30.1022, 17.30.1023, 17.30.1024,	)	(WATER PROTECTION BUREAU)
17.30.1033, 17.30.1040, and	)	
17.30.1041 pertaining to Montana	)	
Ground Water Pollution Control	)	
System permits	)	

TO: All Concerned Persons

1. On November 15, 2023, at 11:00 a.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

<https://mt->

[gov.zoom.us/j/82919819714?pwd=ajZVclJlZVQ3T0czNkNkMDF6ZHZ3QT09](https://mt-gov.zoom.us/j/82919819714?pwd=ajZVclJlZVQ3T0czNkNkMDF6ZHZ3QT09)

Passcode: 868664

Or One tap mobile :

+12063379723,,82919819714#,,,,*868664# US (Seattle)

+12133388477,,82919819714#,,,,*868664# US (Los Angeles)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 206 337 9723 US (Seattle)

+1 213 338 8477 US (Los Angeles)

+1 646 558 8656 US (New York)

Webinar ID: 829 1981 9714

Passcode: 868664

International numbers available: <https://mt-gov.zoom.us/j/82919819714?pwd=ajZVclJlZVQ3T0czNkNkMDF6ZHZ3QT09>

Or an H.323/SIP room system:

H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)

Meeting ID: 829 1981 9714

Passcode: 868664

SIP: 82919819714@zoomcrc.com

Passcode: 868664

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no

later than 5:00 p.m. on November 10, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail MAR17-433rulemaking@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I CONTINUATION OF EXPIRING PERMITS (1) The conditions of an expired permit continue in force until the effective date of a new permit if:

(a) the permittee has submitted a timely and complete application under ARM 17.30.1033 for a reissued permit; and

(b) the department, through no fault of the permittee, does not issue a new permit under ARM 17.30.1033 with an effective date on or before the expiration date of the previous permit.

(2) Permits continued under this rule remain fully effective and enforceable until the effective date of a new permit.

(3) When the permittee is not in compliance with the conditions of the expiring or expired permit, the department may choose to do any or all of the following:

(a) initiate enforcement action based upon the continued permit;

(b) issue a notice of intent to deny the new permit under ARM 17.30.1024;

(c) issue a new permit under ARM 17.30.1024 with appropriate conditions; or

(d) take other actions authorized by the MGWPCS rules.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: It is necessary to adopt NEW RULE I to establish and implement a clear and consistent system for issuing Montana Ground Water Pollution Control System (MGWPCS) permits authorizing discharges from point sources to state ground water. NEW RULE I is based on ARM 17.30.1313, which provides for continuation of expired Montana Pollutant Discharge Elimination System (MPDES) permits. NEW RULE I is proposed to adopt a consistent system for issuing permits to point sources authorizing discharges of pollutants to state waters. NEW RULE I will incorporate practices and procedures currently implemented by the department to administer the MGWPCS permitting program and will clarify the status of administratively continued permits.

NEW RULE II OBLIGATION TO RAISE ISSUES AND PROVIDE INFORMATION (1) All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the department's tentative decision to prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under ARM 17.30.1024.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: It is necessary to adopt NEW RULE II to establish and implement a clear and consistent system for issuing MGWPCS permits authorizing discharges from point sources to state ground water. NEW RULE II is based on ARM 17.30.1375, and will obligate interested persons to raise all reasonably ascertainable issues and arguments on a tentative permit decision during the public comment period. NEW RULE II is necessary to provide a consistent system for issuing permits to point sources authorizing discharges of pollutants to state waters. NEW RULE II will incorporate practices and procedures currently implemented by the department to administer the MGWPCS permitting program.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.30.1001 DEFINITIONS For the purposes of this subchapter, unless the context clearly indicates otherwise, The the following definitions terms have the meanings indicated below and are supplemental to the definitions, ~~in addition to those in 75-5-103, MCA, apply throughout this subchapter:~~

(1) "Advanced treatment system" means a subsurface wastewater treatment system that discharges a total nitrogen effluent concentration of 7.5 mg/L or less total nitrogen.

(1) remains the same, but is renumbered (2).

(3) "Conventional treatment system" means a subsurface wastewater treatment system that provides less nitrogen reduction than Level 2 treatment, or discharges a total nitrogen concentration of greater than 24 mg/L.

(4) "Cumulative" means the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development.

~~(2)(5)~~ "DEQ-7" means Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (June 2019 edition), which establishes numeric water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

~~(a)~~ The board department adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (June 2019 edition), which establishes numeric water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) through (6) remain the same, but are renumbered (6) through (9).

~~(7)(10) "Mixing zone" is defined in 75-5-103, MCA means a portion of ground water to which pollutants are discharged and in which otherwise applicable ground water standards may be exceeded.~~

(11) "Modification" means any change to a sewage system, treatment works, or disposal system including expansions, production increases, or process modifications which may result in new or increased discharges of pollutants into state ground waters.

(8) through (13) remain the same, but are renumbered (12) through (17).

(18) "Public sewage system" has the meaning specified in ARM 17.38.101.

(14) remains the same but is renumbered (19).

(20) "Sewage" is defined in 75-5-103, MCA.

(15) and (16) remain the same, but are renumbered (21) and (22).

~~(17)~~(23) "Unrestricted reclaimed wastewater" means wastewater that is treated to the standards for Class A-1 or Class B-1 reclaimed wastewater, as set forth in Appendix B of Department Circular DEQ-2, entitled "Montana Department of Environmental Quality Design Standards for Public Sewage Systems" (2018 edition).

(a) The ~~board~~ department adopts and incorporates by reference Department Circular DEQ-2, entitled "Department of Environmental Quality Design Standards for Public Sewage Sytems" (2018 edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

(24) "Wastewater" has the meaning specified in ARM 17.38.101.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-301, 75-5-401, MCA

REASON: It is necessary to adopt the proposed definition of "advanced treatment system" to clarify when a wastewater treatment system may be deemed capable of providing advanced treatment; and to adopt the proposed definition of "conventional treatment system" to clarify when a subsurface wastewater treatment system provides less nitrogen reduction than Level 2 or advanced treatment. Determining the level of treatment a wastewater system is capable of providing is important to determine the cumulative nitrogen load for purposes of permitting requirements, making nonsignificance determinations, and applying the State of Montana's nondegradation policy.

It is necessary to adopt the proposed definition of "cumulative" for consistency within this subchapter and to clarify the use of the term for the regulated public. Under the MGWPCS rules, "cumulative" means the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development.

Additionally, it is necessary to replace the language incorporating DEQ-2 and DEQ-7 by reference by the Board of Environmental Review because, as of July 1, 2021, the board no longer has rulemaking authority under the Montana Water Quality Act. See Senate Bill 233, Sections 31, 32, and 34, adopted by the 2021 Montana Legislature.

The department is proposing to strike portions of the definitions of "mixing zone" and "sewage" to conform with 2-4-305, MCA and not unnecessarily repeat the statutory definitions in rule.

It is necessary to adopt the proposed definition of "modification" to clarify when changes to a wastewater treatment system may trigger the need for a new permit action.

It is necessary to adopt the proposed definitions of "public sewage system" and "wastewater" to adopt definitions consistent with ARM Title 17, chapter 38, subchapter 1 pertaining to public water and sewage systems. Adoption of these proposed definitions will provide a consistency and clarity within the department and for the public.

17.30.1005 APPLICABILITY OF GROUND WATER STANDARDS AND BASIS FOR CLASSIFICATIONS (1) remains the same.

(2) The ground water standards may be exceeded within a mixing zone established pursuant to applicable provisions in ARM 17.30.501 through 17.30.518 Title 17, chapter 30, subchapter 5.

(3) and (4) remain the same.

AUTH: 75-5-301, 80-15-105, 80-15-201, MCA

IMP: 75-5-301, 80-15-201, MCA

REASON: It is necessary to amend (2) to reference the applicable mixing zone rules in ARM Title 17, chapter 30, subchapter 5 rather than citing the individual rules in that subchapter.

17.30.1010 MIXING ZONE (1) remains the same.

~~(2) The board hereby adopts and incorporates by reference ARM Title 17, chapter 30, subchapter 5, which establishes requirements and procedures for the granting or denying of mixing zones by the department.~~

AUTH: 75-5-301, MCA

IMP: 75-5-301, MCA

REASON: The department is proposing to strike (2) in order to eliminate the unnecessary repetition of the mixing zone rules adopted at ARM Title 17, chapter 30, subchapter 5. The applicable provisions of the mixing zone rules are already referenced in ARM 17.30.1005.

17.30.1022 EXCLUSIONS FROM PERMIT REQUIREMENTS (1) In addition to the permit exclusions identified in 75-5-401, MCA, the following activities or operations are not subject to the permit requirements of ~~ARM 17.30.1023, 17.30.1024, 17.30.1030 through 17.30.1033, 17.30.1040, and 17.30.1041~~ this subchapter:

(a) through (c) remain the same.

(d) public sewage systems ~~with a design capacity less than 5000 gallons per day, that are reviewed and approved by the department after May 1, 1998~~ March 1, 2024, under Title 75, chapter 6, MCA, and ARM 17.38.101 under a common design plan or serving a common development that cumulatively discharge less than one pound of total nitrogen per day;

(e) multi-family sewage disposal systems reviewed and approved by the department under Title 76, chapter 4, MCA, and multi-family sewage disposal systems reviewed and approved by a local government under Title 76, chapter 3, MCA, after May 1, 1998. ~~However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);~~

(f) multiple-user sewage disposal systems reviewed and approved by the Department of Public Health and Human Services under Title 50, chapters 50, 51, and 52, MCA, and multi-family sewage disposal systems reviewed and approved by local boards of health under Title 50, chapter 2, MCA, after May 1, 1998. ~~However, this exclusion does not apply to aerobic package plant systems, mechanical treatment plants, and nutrient removal systems, which require a high degree of operation and maintenance, or systems which require monitoring pursuant to ARM 17.30.517(1)(d)(ix);~~

(g) and (h) remain the same.

(2) Cumulative total nitrogen loads for permit exclusions in (1)(d) are calculated by adding each contributing load from the public sewage systems reviewed and approved by the department under a common design plan or that serve a common development.

~~(2)~~(3) Notwithstanding the exclusions set forth in (1), all sources are subject to the provisions of ARM 17.30.1001 through ~~17.30.1003, 17.30.1010, 17.30.1011,~~ and 17.30.1045. Furthermore, any excluded source which the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602, MCA.

AUTH: 75-5-401, MCA

IMP: 75-5-401, 75-5-602, MCA

REASON: It is necessary to amend (1) to reference all the MGWPCS rules in ARM Title 17, chapter 30, subchapter 10 rather than citing individual rules.

The proposed changes to (1)(d) are necessary to clarify that permit exclusions apply to the total nitrogen load from the public sewage systems reviewed and approved by the department under a common design plan or serving a common development. This proposed change is necessary to change the basis for permit exclusions to the total load capacity of the entire public sewage system rather than design flow. This change will better protect water quality by considering the cumulative load from all elements of a public sewage system and will close the loophole that allowed development proposals that divided wastewater flow capacity among multiple systems with design capacity less than 5000 gallons per day. The proposed change is necessary to end use of this unintended loophole and to encourage development proposals with higher levels of wastewater treatment.

The proposed changes to (1)(e) and (f) are necessary to delete the exclusions from permit exclusions for certain nonpublic aerobic package plant systems, mechanical treatment plants, and nutrient removal systems. The proposed deletion will strike superfluous language. The department has never enforced the limitations in (1)(e) and (f) on permit exclusions for nonpublic systems. Under (3), the department may require any source determined to be the cause of violation of ground water quality standards to take appropriate corrective action whether the source is excluded from permit requirements or not.

The proposed addition of (2) is necessary to clarify the department's intent to consider the cumulative total nitrogen load from a public sewage system proposed under a common design plan or serving a common development for purposes of the

permit exclusion in (1)(d). Considering the total load from a public sewage system when applying the permit exclusion in (1)(d) will reduce nitrogen loading to groundwater from multiple systems with design capacity less than 5000 gallons per day.

The proposed amendment of (3) is necessary to correct previous amendments to the MGWPCS rule that transferred and repealed ARM 17.30.1002 and 17.30.1003 and to clarify that all sources discharging pollutants to groundwater are subject to MGWPCS rules ARM 17.30.1001 through 17.30.1010, including definitions (ARM 17.30.1001), applicability provisions (ARM 17.30.1005), groundwater standards and use classifications (ARM 17.30.1006), sample collection (ARM 17.30.1007), mixing zone (ARM 17.30.1010), and nondegradation (ARM 17.30.1011) requirements. Additionally, as explained above, all sources are subject to ARM 17.30.1045, which sets forth the department's authority to take emergency action and/or initiate enforcement to require corrective action to address any source that causes groundwater quality standards to be exceeded.

17.30.1023 PERMIT APPLICATIONS (1) through (3) remain the same.

(4) All applications for an MGWPCS permit must be submitted on forms ~~obtained from~~ provided by the department and must ~~contain~~ include the following information ~~as deemed necessary by the department~~:

- (a) a specific site plan, indicating topography;
- (b) location and operation of treatment works and disposal systems;
- (c) location of adjacent state surface waters;
- (d) list of surface owners and lessees of land within one mile of the proposed source;
- (e) location of water supply wells and springs within one mile;
- (f) description of waste or process solutions to be contained on site; and
- (g) information describing existing ground water quality and uses within one mile of the site.

(5) In addition to the application requirements in (4), ~~The~~ the department may require the submission of additional data and information ~~with any MGWPCS permit application where~~ when warranted by the potential impacts of a source, ~~including, but not limited to, the following:~~

~~(a) specific design conditions and process descriptions, proposed alternatives, soil conditions, descriptions in areas proposed for location of treatment ponds and land disposal, geological conditions, ground water characteristics, local hydrogeology, discussion of potential for and measures to be taken for emergency and accidental spills, chemical and physical characteristics of process water and wastewater, nature of proposed pond sealants and linings.~~

~~(b) for industrial wastes, waste flow diagrams showing water and material balances, chemical additions, and waste volumes and concentrations before and after treatment including, but not limited to, oil and other floating material, biochemical oxygen demand, settleable and suspended solids, acids, alkalies, dissolved salts, organic materials, toxic materials, compounds producing taste and odor in water, and colored materials and dyes.~~

~~(c) proposed measures to be taken to provide alternative water supplies or treatment in the event any domestic, municipal, agricultural, or commercial/industrial well is adversely affected by the operation of the source; and~~

~~(d) a written evaluation of alternative disposal practices for maximization of environmental protection.~~

(6) Operators Applicants who have submitted complete permit applications for ground water discharge sources to the department under the MPDES permit program will be deemed to have complied with the requirements of this rule.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to (4) are necessary to require applicants to submit an application on a form provided by the department and, at minimum, to provide the information listed in (4)(a) through (g). The listed information is required for the department to assess impacts associated with a discharge to state ground water.

The proposed amendments to (5) are necessary to clarify that the department may require additional information, above and beyond what is required in (4) when necessary to assess water quality impacts associated with the permitted discharge.

The changes to (5)(a) through (d) are necessary to remove language rendered redundant by the additions to (4)(b) and to (5) and the department's discretion to request the same data in the permit application when necessary to assess potential impacts related to a discharge.

The proposed amendments to (6) are necessary to clarify that submitting a complete permit application under the MPDES Rules in ARM Title 17, chapter 30, subchapter 13 fulfills the permit application requirements under the MGWPCS rules.

17.30.1024 REVIEW PROCEDURES (1) remains the same.

(2) An application for a MGWPCS permit is not deemed complete until the permit fee required under ARM 17.30.201 is remitted to the department.

~~(2)(3)~~ After receipt of a complete MGWPCS permit application and requested supplemental information, the department shall make a tentative determination with respect to issuance or denial of an MGWPCS permit. The tentative determination must be based on compliance or noncompliance with the requirements of this subchapter and Title 75, chapter 5, MCA.

(3) remains the same, but is renumbered (4).

(4)(5) A public notice of every completed MGWPCS permit application tentative determination to issue a permit must be circulated by the department in accordance with the procedures described in ARM 17.30.1040 to inform the public of the proposed discharge and of the tentative determination.

~~(5) The department shall provide a period of not less than 30 days following the date of the public notice during which time any person may submit written views or request a public hearing on the tentative determination. Any request for a public hearing must indicate the interest of the party filing the request and the reasons why a hearing is warranted.~~

~~(6) The department may hold a hearing on its own initiative or when it determines good cause exists to hold such a hearing upon request of any person. Public notice of a public hearing on a tentative determination must be given in accordance with ARM 17.30.1040.~~

~~(7) If a public hearing is not held pursuant to (6), the department shall, within 30 days after termination of the comment period provided for in (5), make a final determination on issuance or denial of an MGWPCS permit. All written comments submitted during the 30-day comment period must be retained by the department and considered in the formation of the final determination.~~

~~(8) If a public hearing is held on the tentative determination, the department shall make its final determination on the MGWPCS permit application within 60 days following the hearing. All comments recorded during the public hearing and written comments submitted during the 30-day comment period required in (5) must be retained by the department and considered in the formation of the final determination.~~

~~(9) After making the final determination on an MGWPCS permit application the department shall issue an MGWPCS permit or give written notice to the applicant of the department's decision to deny, including notice to the applicant of its right to appeal the denial to the board.~~

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: Proposed new (2) is necessary to provide that the fee required under ARM 17.30.201 must be paid before an application for MGWPCS permit is deemed complete. The proposed amendment to (3), formerly (2), is necessary to emphasize that a complete MGWPCS permit application including all required supplemental information and the fee triggers the department's review and tentative permit decision. The proposed amendment to (4), formerly (3), is necessary to clarify that it is the tentative permit determination, not the permit application, that is circulated by the department in accordance with the procedures described in ARM 17.30.1040 to inform the public of the proposed discharge and the tentative permit decision.

The department is proposing to strike former (5) through (9) in order to eliminate unnecessary repetition and potential conflict with the public notice requirements adopted at ARM 17.30.1040.

17.30.1033 REISSUANCE OF PERMITS (1) Any permittee who wishes to continue to discharge after the expiration date of ~~his~~ their MGWPCS permit must request reissuance of ~~his~~ their permit at least ~~90~~ 180 days prior to its date of expiration.

(2) through (4) remain the same.

(5) The processing procedures for MGWPCS permit applications described in ARM 17.24.1024~~(4) through (9)~~ will apply to the reissuance of an MGWPCS permit.

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: This rule is amended to comply with gender-neutral rule writing conventions and to provide permittees with 180 days to request renewal or reissuance of MGWPCS permits. The 180-day time frame is consistent with the time frame for renewal of MPDES permits under ARM 17.30.1322. Changes to (5) correlate the proposed changes to ARM 17.30.1024.

17.30.1040 PUBLIC NOTICE ~~(1) Public notice of every completed MGWPCS application must be mailed to any person upon request and must be circulated within the geographic area of the proposed discharge. Circulation may include any of the following:~~

- ~~(a) posting in the post office and public places of the municipality nearest the premises of the applicant in which the discharge is located;~~
- ~~(b) posting near the entrance to the applicant's premises and in nearby places; or~~
- ~~(c) publishing in local newspapers and periodicals, or if appropriate, in a daily newspaper of general circulation.~~

(1) The department shall provide public notice of the department's tentative determination to issue a permit. The department shall mail the notice to:

- (a) the applicant;
- (b) any agency or entity identified in ARM 17.30.1041; and
- (c) any person on request.

(2) In addition, the department shall publish a notice of the tentative determination to issue a permit for two consecutive weeks on the department's web page and may include notice to the public by:

- (a) posting in a newspaper of general circulation within the geographic area of the proposed discharge;
- (b) posting in the post office and public places of the municipality nearest the premises of the proposed activity;
- (c) posting near the entrance to the applicant's premises and in nearby places; or
- (d) any other notice that the department considers reasonable to encourage public participation in the decision.

~~(2)(3) Public notice of any public hearing held pursuant to this subchapter must be circulated at least 30 days in advance of the hearing and at least as widely as was the notice for the MGWPCS application of the department's tentative determination.~~ Circulation must include at least the following:

- ~~(a) through (c) remain the same.~~

AUTH: 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to (1) are necessary to correctly state that it is the tentative permit decision and not the completed MGWPCS permit application that triggers the public notice and comment requirements. Former (1) is stricken and new (1) is proposed to better state the department's obligation to

communicate tentative state actions to the applicant and stakeholders. The specific methods for notifying the public at large are moved to (2) and amended to better reflect modern technology and modern practices of meeting public notice obligations and encouraging public engagement.

The proposed amendments to (2) are necessary to provide for modern methods of public notice and engagement of a tentative state action. These include notice on the department's web page, posting in local newspapers, and posting in public locations in the area of the proposed discharge.

The proposed amendments to (3) are necessary to eliminate the minimum 30-day public notice requirements for a public hearing. The change will provide flexibility by allowing a shorter time frame when necessary to meet public notice requirements and finalize a permit decision. Additionally, the proposed amendments to (3) are necessary to correctly state it is the tentative permit decision that is subject to the public notice requirements in (2).

17.30.1041 DISTRIBUTION OF INFORMATION (1) The following governmental agencies must be included on a mailing list for public notice of tentative determinations to issue MGWPCS permits applications and are exempted from a copying fee where copies of a draft permit, fact sheet, or any related documents are requested:

- ~~(a) United States Environmental Protection Agency;~~
- ~~(b) United States Bureau of Land Management;~~
- ~~(c) United States Bureau of Reclamation;~~
- ~~(d) United States Soil Conservation Service;~~
- ~~(e) United States Forest Service;~~
- ~~(f) United States Geological Survey;~~
- (g) through (m) remain the same, but are renumbered (a) through (g).
- (2) through (5) remain the same.

AUTH: 75-5-401, MCA

IMP: 75-5-105, 75-5-401, MCA

REASON: The proposed amendments to (1) are necessary to strike (1)(a) through (f) requiring public notice of tentative determinations to issue MGWPCS permits to the federal Environmental Protection Agency, Bureau of Land Management, Bureau of Reclamation, Soil Conservation Service, Forest Service, and Geological Survey. The department's permit decisions regarding discharges to state ground water are not subject to federal jurisdiction. Therefore, notice to the aforementioned federal entities of all tentative MGWPCS permit decisions is not required. Under the current (1)(l), the department may still provide notice to any state or federal agency upon their request.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the department, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail MAR17-433rulemaking@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

6. Kirsten Bowers, attorney for the department, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Whitaker
NICHOLAS WHITAKER
Rule Reviewer

/s/ Christopher Dorrington
CHRISTOPHER DORRINGTON
Director
Department of Environment Quality

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.17.127 pertaining to) PROPOSED AMENDMENT
prevailing wages)

TO: All Concerned Persons

1. On November 9, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/85799489823>
Meeting ID: 857 9948 9823, Passcode: 915777
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 857 9948 9823, Passcode: 915777

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 2, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2023~~ 2024 amended version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2023~~ 2024 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2023~~ 2024 amended version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2023~~ 2024 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., November 17, 2023.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule may significantly and directly impact small businesses. The proposed amendments will have an impact on some, but not all small businesses (those with fewer than 50 full-time employees). The proposed amendments directly affect the wages that must be paid for work on Montana public works contracts. The types of businesses affected are primarily those in the construction industry, but only affect those businesses that perform (or seek to perform) work on public works projects. In addition, there are businesses that provide certain types of nonconstruction services to state and local government agencies that are subject to payment of the prevailing wage rate. The types of nonconstruction service businesses that potentially are subject to the award of a public works contract are listed in 18-2-401(9), MCA.

There is no single effect on small businesses as a result of the proposed amendments. Some employers may have to pay higher wages as a result of changes to the prevailing wage rates; other employers may have a wage structure that is the same as or higher than the prevailing wage rate. Historically, some employers have stated that the prevailing wage rates are set too high, while other employers have stated that the rates are too low. In certain cases the difference between the established prevailing wage rate and the employer's customary wage rate may be significant, but it is unclear whether that difference will result in a

significant change to the profitability of any given small business, as there are many other economic factors at play.

Montana law requires that prevailing wage rates be set following an annual survey of wages. There is an established statutory and administrative formula that establishes the prevailing wage rate for each work classification, based on the data and information gathered. The alternative to amending the wage rates is to not amend the rate, thus freezing the wage rate at the last-adopted level. Some employers would probably be adversely affected by the failure to adopt new prevailing wage rates. The department believes that under either alternative, some small businesses will be adversely affected by the selected alternative. The small businesses likely to be adversely affected by adoption of new rates are probably not the same as those that are likely to be adversely affected by not adopting new rates.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of ARM)
24.156.1622 pertaining to supervision)
of physician assistant)

NOTICE OF PUBLIC HEARING ON
PROPOSED REPEAL

TO: All Concerned Persons

1. On November 9, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/86891956006>
Meeting ID: 868 9195 6006, Passcode: 421846

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 868 9195 6006, Passcode: 421846

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 2, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rule proposed to be repealed is as follows:

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-301, 37-20-403, MCA

REASON: The board proposed to substantially repeal this rule in MAR Notice No. 24-156-94, broadly implementing House Bill (HB) 313. On September 26, 2023, the Economic Affairs Interim Committee voted to object informally to that rulemaking, due to the continued presence of this rule, as well as comments received from the sponsor of HB 313. In light of that objection, as well as the limited function and importance of the rule following HB 313, the board proposes to repeal the rule.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., November 17, 2023.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624, and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 1, 2023.

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.189.301, 24.189.401,	)	PROPOSED AMENDMENT,
24.189.602, 24.189.610, 24.189.613,	)	ADOPTION, AND REPEAL
and 24.189.614, the adoption of NEW	)	
RULES I through X, and the repeal of	)	
ARM 24.189.205, 24.189.411,	)	
24.189.415, 24.189.603, 24.189.604,	)	
24.189.607, 24.189.625, 24.189.633,	)	
24.189.901, 24.189.904, 24.189.907,	)	
24.189.910, 24.189.911, 24.189.912,	)	
24.189.913, 24.189.916, 24.189.919,	)	
24.189.922, 24.189.925, 24.189.928,	)	
24.189.931, 24.189.934, 24.189.2101,	)	
24.189.2104, 24.189.2107,	)	
24.189.2301, 24.189.2305,	)	
24.189.2309, 24.189.2314,	)	
24.189.2318, and 24.189.2405	)	
pertaining to the board of	)	
psychologists	)	

TO: All Concerned Persons

1. On November 9, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83739786701>
Meeting ID: 837 3978 6701, Passcode: 071279

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 837 3978 6701, Passcode: 071279

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 31, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional

licensing boards administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff.

The 2021 Montana Legislature enacted Chapter 497, Laws of 2021 (Senate Bill (SB) 357), an act that generally revised laws relating to the provision of telehealth services in Montana. The bill was signed by the Governor on May 12, 2021, and became effective October 1, 2021. The Board of Psychology (board) is proposing several rule changes to implement the bill.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules, remove citations to repealed statutes, and provide the complete sources of the board's rulemaking authority.

Following consideration of the department's suggested changes, the board determined it is reasonably necessary to amend six rules, repeal 31 rules, and adopt ten new rules to align with the Red Tape Relief Initiative. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following the specific rule.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.189.301 DEFINITIONS (1) "APA" means the American Psychological Association.

~~(2) "Asynchronous store and forward" means the transmission, via store-and-forward technology as defined in 33-22-138, MCA, of a patient's medical information from an originating site to a health care provider at a distant site without the presence of the patient.~~

~~(3)~~ (2) "BACB" means the Behavior Analyst Certification Board, a nonprofit corporation whose credentialing programs for behavior analysts and assistant behavior analysts are accredited by the National Commission for Certifying Agencies.

~~(4)~~ (3) "Behavior technician" means a supervisee primarily responsible for the direct implementation of behavior analytic services. The behavior technician does not design intervention or assessment plans.

~~(5) "Defined professional relationship" means a relationship in which a licensee or license applicant provides diagnostic, assessment and/or therapeutic services to a client. A defined professional relationship shall be initially established in a context where services are provided:~~

~~(a) in person and face-to-face; or~~
~~(b) transmitted via electronic or related methods. If provided under this subsection, the context must also be:~~

~~(i) two-way;~~
~~(ii) interactive;~~

- ~~(iii) real-time;~~
- ~~(iv) simultaneous;~~
- ~~(v) continuous; and~~
- ~~(vi) providing for both audio and visual interaction.~~

~~(6) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.~~

~~(7) (4) "Health care provider" means health care provider as is defined in 33-22-138, MCA.~~

~~(8) "In-person encounter" means that a licensee and the patient are in the physical presence of each other during the licensee-patient encounter.~~

~~(9) (5) "Licensee" means the holder of a current license issued under 37-17-302 or 37-17-403, MCA by the board.~~

~~(10) (6) "Licensee-patient relationship" means that:~~

~~(a) the licensee agrees to undertake diagnosis and/or treatment of a person an individual seeking services from the licensee; and~~

~~(b) the person individual agrees to be diagnosed and/or treated by the licensee whether or not there has been an in-person encounter meeting between the two licensee and the person.~~

~~(11) (7) "NCCA" means the National Commission for Certifying Agencies.~~

~~(12) "One year's academic residency" means continuous, full-time, active engagement by the student in the elements of the training program while the student is physically present during one academic year at the educational institution granting the doctoral degree.~~

~~(a) Critical components of the residency must include:~~

~~(i) adequate opportunity for the resident to:~~

~~(A) concentrate on required coursework;~~

~~(B) obtain professional training and scholarship;~~

~~(C) work closely with professors, supervisors, and other students; and~~

~~(D) acquire the habits, skills, knowledge, and insights necessary for attaining a doctoral degree in psychology; and~~

~~(ii) adequate time for faculty, training staff, supervisors, and administrators to adequately assess all elements of the student's competence including, at a minimum:~~

~~(A) emotional stability and well-being;~~

~~(B) interpersonal competence;~~

~~(C) professional development; and~~

~~(D) personal fitness to practice psychology.~~

~~(b) The year of residency that uses face-to-face contact for shorter durations throughout the year or that uses video teleconferencing or other electronic means is not acceptable.~~

~~(c) The year of acceptable academic residency experience shall consist of two semesters or three quarters with continuous experience on campus, in no less than three month increments, and be accrued in no more than 18 months.~~

~~(d) Full-time experience shall consist of at least 30 hours on campus per week, but no more than 45 hours per week each contiguous week of the semester or~~

~~quarter. The board will consider situations that are not full-time on a case-by-case basis.~~

~~(e) Active engagement in the elements of the training program shall be fully documented by a log of residency activities on a form prescribed by the board and signed by the student's academic advisor. Such residency activities must:~~

~~(i) include both faculty-to-student and student-to-student face-to-face (personal) interaction;~~

~~(ii) be conducted by the psychology faculty of the institution at least 90 percent of the time;~~

~~(iii) be fully documented by the institution; and~~

~~(iv) relate substantially to the program and course content.~~

~~(f) An internship requirement cannot be used to fulfill the academic year requirements of the residency.~~

~~(g) Video conferencing will not be allowed to satisfy the requirements of the academic residency.~~

~~(h) The institution must clearly document its assessment and evaluation of the applicant's performance.~~

~~(13) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where an asynchronous store-and-forward service originates.~~

~~(14) (8) "Psychological resident" means a supervisee following board approval of a supervised postdoctoral supervision proposal. This title shall be:~~

~~(a) used only in conjunction with activities and services of the postdoctoral supervised training to fulfill the experience requirements;~~

~~(b) used for a maximum of five years; and~~

~~(c) identified for clients, third-party payers, and other entities.~~

~~(15) "Synchronous interaction" means a real-time interaction between a patient located at an originating site and a health care provider located at a distant site.~~

~~(16) (9) "Telehealth" means the mode of delivering health care services via electronic information and communication technologies while a patient is at an originating site and a licensee is at a distant site, with or without an intervening health care provider. Telehealth includes synchronous interactions and asynchronous store-and-forward transfers delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq. The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission is defined at 37-2-304, MCA.~~

AUTH: 37-1-131, 37-2-304, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-2-304, 37-17-101, 37-17-302, 37-17-402, 37-17-403, 37-17-404, 37-17-406, MCA

REASON: The board is amending and striking several definitions in this rule to streamline and simplify the regulations on telehealth practice. In 2021, the Montana legislature passed SB 357 which provides telehealth guidelines for all health care licensees of Title 37, MCA, at 37-2-305, MCA. Because the statute provides greater

and more specific guidance for practicing via telehealth methods, it is no longer necessary to have such specific requirements in board rules. These changes align with the repeal of ARM 24.189.415 and the adoption of NEW RULE I.

The board is striking the definition of "defined professional relationship" as outdated and unnecessary. This term was adopted in 2004 to address confusion surrounding the provision of services via the internet and other relatively new methods of electronic communication. Nearly 20 years later, electronic communication has developed substantially in quality, widespread availability, and the safeguarding of confidentiality and patient information. Following legislative changes in telehealth, the board is adopting NEW RULE I to replace ARM 24.189.415, the overly specific telehealth rule.

It is reasonably necessary to strike the residency definition at (12) and instead house the definition in its own standalone rule, NEW RULE III, for clarity and ease of use by the reader.

24.189.401 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

- | | |
|---|------------------|
| (a) Psychologist application fee | \$450 <u>338</u> |
| (b) through (g) remain the same. | |
| (h) Behavior analyst active license renewal fee | 450 <u>338</u> |
| (i) Assistant behavior analyst active license renewal fee | 200 <u>150</u> |
| (2) remains the same. | |

AUTH: 37-1-134, 37-17-202, 37-17-406, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, 37-17-403, 37-17-406, MCA

REASON: The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, and ensure that fees related to its program area will provide the amount of money usually needed for the operation of board services. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. Therefore, the board is reducing renewal fees for all license types by 25%. This reduction, as well as a 2023 renewal fee abatement will reduce the board's cash balance to maintain compliance with statutory requirements and ensure adequate revenue to support board activities through the next biennium.

The board estimates the fee reductions and new fees will affect approximately 348 licensees and result in a \$38,728 reduction in annual revenue.

24.189.602 EXEMPTIONS FROM LICENSURE (1) ~~To be exempt from licensure under~~ For purposes of licensure exemption in 37-17-104(1)(b), MCA, "within the confines of the agency or institution" means that the person is providing activities and services limited to the purposes and used only within the confines of the organization. ~~For example, a person may not perform activities and services that, at the time they are performed, include evaluations, assessments, or other activities and services that would produce a report or other record that is intended or anticipated to be admitted into a court proceeding to determine the person's~~

~~competency or fitness in relation to the person's rights or privileges outside the organization.~~

(2) For the limited services described in 37-17-104(1)(d), MCA, to be exempt as "consulting" services, including but not limited to services provided via electronic means on behalf of clients located within the state of Montana, the person claiming the exemption must not be a resident of Montana, must be licensed to provide the services in another state or Canadian province, and provide all such activities and services either:

(a) and (b) remain the same.

(3) To be exempt under 37-17-104(1)(e), MCA, one must have submitted a completed application to the board within 12 months of becoming a Montana resident. Whether someone is a resident of Montana is a question determined by considering all relevant facts, ~~including but not limited to the location of the person's primary domicile, whether the person has a Montana driver's license, and whether the person is registered to vote or has voted in Montana in each application.~~

~~(4) "Qualified" members of other professions under 37-17-104(1)(a) and (2), MCA, for purposes of administering tests and making evaluations or assessments means only those individuals who are licensed by:~~

~~(a) the Board of Medical Examiners or the Board of Nursing and whose scope of practice specific to their license includes the administering of psychological tests and the making of evaluations or assessments; or~~

~~(b) the Board of Behavioral Health and who meet the qualifications set by that board in compliance with 37-17-104, MCA.~~

AUTH: 37-17-202, MCA

IMP: 37-17-104, MCA

REASON: The board is updating this rule and its catchphrase for clarity and ease of use by the reader. The board is amending (1) and (3) by removing the examples of facts to be considered when assessing an individual's Montana residency. Because the board will consider all relevant facts in each specific case, it is unnecessary and not helpful to list only a few of the many potential facts.

It is reasonably necessary to strike (4) as contrary to the provisions of 37-17-104, MCA, which provides that qualified members of other professions may perform work of a psychological nature in certain circumstances. Section 37-17-104(1)(a), MCA, allows the practice as long as it is consistent with the professional's training and provides a non-exclusive list of examples of these qualified professionals. Section 37-17-104(2), MCA, allows "those qualified members" in (1)(a) to specifically hold themselves out as able to perform psychological testing, evaluation, and assessment. Limiting the professionals who can do such testing to just a few qualified professionals is overly restrictive and inconsistent with the provisions of 37-17-104(1)(a), MCA.

24.189.610 EXAMINATION (1) Examinations for licensure are a computerized national examination and a computerized Montana jurisdictional training course with evaluative aspects. ~~These will be~~ conducted by the board or its ~~duly constituted~~ representative(s). The Acceptable performance on the

computerized examination developed by the national licensing program, with the support of the Association of State and Provincial Psychology Boards, ~~may be given.~~ ~~The acceptable level of performance on the national examination is a scaled score of 500.~~

(2) remains the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: The board is amending this rule to simplify and streamline language for ease of use by the reader.

24.189.613 NONROUTINE PSYCHOLOGIST APPLICATIONS (1) and (2) remain the same.

AUTH: 37-1-131, MCA

IMP: 37-1-101, 37-1-131, MCA

REASON: The board is amending the catchphrases for this rule and ARM 24.189.614 so the provisions will apply to all board licensees. The board is also repealing the duplicate rules for behavior analysts and assistant behavior analysts, ARM 24.189.911 and 24.189.912, as they will be covered under these amended rules.

24.189.614 PSYCHOLOGIST APPLICANTS WITH CRIMINAL CONVICTIONS (1) remains the same.

AUTH: 37-1-131, MCA

IMP: 37-1-101, 37-1-131, MCA

5. The proposed new rules are as follows:

NEW RULE I TELEHEALTH SERVICES (1) Licensees may provide services through telehealth as provided in 37-2-305, MCA.

(2) A licensee-patient relationship must be established prior to providing services via telehealth through:

(a) in-person interview and examination when the standard of care requires such;

(b) consultation with another health care provider with a documented relationship with the patient who agrees to participate in, or supervise, the patient's care; or

(c) telehealth if the standard of care does not require an in-person meeting.

AUTH: 37-2-305, MCA

IMP: 37-2-305, MCA

REASON: The board is adopting this new rule and repealing ARM 24.189.415 to streamline and simplify the regulations on telehealth practice. In 2021, the Montana legislature passed SB 357 which provides telehealth guidelines for all health care licensees of Title 37, MCA, at 37-2-305, MCA. Because the statute provides greater and more specific guidance for practicing via telehealth methods, it is no longer necessary to have such specific requirements in board rules.

NEW RULE II COURSE OF STUDY MINIMUM STANDARDS (1) Applicants seeking licensure via 37-17-302(3)(c), MCA, must have their courses of study assessed by a board-approved evaluator to ensure compliance with minimum standards in this rule.

(a) The board shall consider, but is not bound by, the evaluator's recommendation.

(b) Applicants must pay any fee required by the evaluator.

(2) Per 37-17-302(3)(c), MCA, a psychology program meets minimum standards if the program:

(a) is administratively housed and clearly identified as a psychology program with emphasis in applied areas such as clinical, counseling, school, or industrial-organizational psychology;

(b) stands as a recognizable, coherent organizational entity within the institution;

(c) has clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(d) follows an organized sequence of study to provide an integrated psychology education experience;

(e) has an identifiable psychology faculty and a psychologist responsible for the program;

(f) has an identifiable body of students who are matriculated in that program for a degree;

(g) includes appropriate supervised clinical experience of at least three terms/two semesters;

(h) contains a curriculum of a minimum of three academic years of full-time graduate study with a pre-doctoral internship per [NEW RULE III] at the educational institution granting the doctoral degree. The curriculum must instruct in scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics, and require students demonstrate competence (a minimum of three or more graduate semester hours/five or more graduate quarter hours) in each of these substantive content areas:

(i) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology;

(ii) Cognitive-affective bases of behavior: learning, thinking, motivation, emotion;

(iii) Social bases of behavior: social psychology, group processes, organizational and systems theory; and

(iv) Individual differences: personality theory, human development, abnormal psychology;

- (i) includes adequate training in psychodiagnosis and several types of psychological assessment and intervention procedures and their theoretical bases; and
- (j) includes at least 60 quarter hours/40 semester hours of formal psychology graduate study.
- (i) No more than 15 quarter hours/ten semester hours of university extension credits may be credited toward the doctoral degree requirement.
- (ii) Of the 60 quarter hours, a minimum of 45 quarter hours/30 semester hours must occur when the applicant is matriculated in the doctoral program and be clearly designated on the transcript as graduate level psychology course work, exclusive of practicum, dissertation, and transfer credits.
- (3) The board and its evaluator have reviewed several applications containing doctoral degrees from American Psychological Association-approved doctoral programs in school psychology and counseling psychology. The board deems these programs qualified under the required minimum standards.

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: Per 37-17-302, MCA, there are three acceptable doctoral degrees for psychologist applicants, including an American Psychological Association (APA) approved doctorate in clinical psychology or a non-APA approved psychology doctorate with an APA approved graduate retraining program. The third educational avenue per (3)(c) is a doctoral degree in psychology from a program meeting minimum standards as set by the board in rule.

The board is repealing ARM 24.189.604 and replacing it with this new rule. The new rule simplifies and updates language and reorganizes the provisions for simplicity and ease of use for the reader. The board has updated minimum requirements for the outdated "residency" requirement to the current standards for a "pre-doctoral internship."

NEW RULE III REQUIRED PRE-DOCTORAL INTERNSHIP (1) As used in [NEW RULE II], "pre-doctoral internship" means active engagement by a student in a training program of the educational institution granting the doctoral degree.

- (a) Critical components of the internship must include:
 - (i) adequate opportunity for the student to:
 - (A) obtain professional training and scholarship;
 - (B) work closely with professors, supervisors, and other students; and
 - (C) acquire the habits, skills, knowledge, and insights needed to attain a doctoral degree in psychology; and
 - (ii) adequate time to assess the student's competence including:
 - (A) emotional stability and well-being;
 - (B) interpersonal competence;
 - (C) professional development; and
 - (D) personal fitness to practice psychology.

(b) The pre-doctoral internship must be at least 1500 hours in length and be completed in no less than nine months and no longer than 24 months. Twenty-five percent of internship hours must be in face-to-face contact with patients or clients.

(c) Internship experience must have at least 30 hours per week at the internship site, but no more than 45 hours per week.

(d) Active engagement must be documented by a log of internship activities signed by the student's academic advisor. Such activities must:

(i) include both faculty-to-student and student-to-student face-to-face interaction;

(ii) be conducted by the psychology faculty of the institution at least 90 percent of the time; and

(iii) relate substantially to program and course content.

(e) The institution must clearly document its assessment and evaluation of the student's performance.

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: The board is striking the residency definition from ARM 24.189.301 and placing it in this standalone rule for clarity and to reduce confusion. This change aligns with the repeal of ARM 24.189.604 and the adoption of NEW RULE II. The board has updated minimum requirements for the outdated "residency" requirement to the current standard for a "pre-doctoral internship."

NEW RULE IV POSTDOCTORAL SUPERVISION (1) Postdoctoral supervisee licenses expire upon conclusion of the approved postdoctoral supervision unless the licensee completes the application process and obtains a full psychologist license.

(2) Supervised experience must occur over two calendar years (3200 hours minimum) as follows:

(a) one year may be predoctoral, occurring after the master's degree and during an American Psychology Association (APA) approved or substantially equivalent internship for a psychology doctoral degree; and

(b) one year (1600 hours minimum) must be postdoctoral occurring after completion of doctoral degree requirements. The board must approve the extension of supervised experience beyond 12 consecutive months.

(3) Postdoctoral supervision requirements are:

(a) at least one hour in-person or approved telehealth supervision each week;

(b) the supervisee providing direct clinical services at least 25 percent of the time;

(c) at least one other licensed mental health professional, in addition to the supervisor, participating in the supervisee's training and on-site when the supervisor is not; and

(d) supervision by a psychologist with:

(i) a minimum of three years licensure prior to supervising; and

(ii) previous supervisor training and/or experience;

- (A) at least equivalent to Montana's requirements; and
- (B) in the skills and knowledge in which the applicant is engaged.
- (4) Satisfactory postdoctoral experience applies the skills, concepts, and principles gained during the formal professional education and includes:
 - (a) administering and interpreting psychological tests and helping solve professional or personal problems for no less than 25 percent of one year (400 hours minimum);
 - (b) supervising graduate-level practicum for no more than 25 percent of one year (400 hours maximum); and
 - (c) designing original research projects, analyzing and reporting research data, and teaching one or more psychology courses for no more than 50 percent of one year (800 hours maximum).
- (5) Unacceptable supervised experience occurring without the board's preapproval and outside the exempted activities of 37-17-104, MCA, is unlicensed practice. Unacceptable experience also includes:
 - (a) repetitious and routine tasks, e.g., administering and scoring structured tests, computing statistics, assisting psychology course instructors, or personal therapy; and
 - (b) experience gained prior to completing all requirements for a psychology master's degree or equivalent.
- (6) Individual solo private practice does not qualify as acceptable professional experience. The supervisee must be an employee of the postdoctoral training setting and shall not bill independently for services provided.
- (7) Credit for part-time supervisee employment will be prorated.
- (8) Supervisors are not required to work at or be employed by the entity employing the supervisee but must:
 - (a) be available for emergency supervision;
 - (b) provide emergency consultation and intervention to the supervisee's clients;
 - (c) interrupt or terminate the supervisee's activities when needed to ensure adequate skill development and the public's protection;
 - (d) report supervisee breaches in ethical, legal, or professional responsibilities to the board; and
 - (e) develop with the supervisee a written individualized training plan that:
 - (i) specifies all roles, goals, and objectives;
 - (ii) is consistent with the purpose of the setting;
 - (iii) meets the supervisee's needs; and
 - (iv) serves as the foundation for quarterly evaluations that:
 - (A) address professional and ethical conduct, psychotherapy and evaluation skills, and other conduct, knowledge, and skills applicable to tasks performed and training received;
 - (B) are reviewed with the supervisee and signed by both supervisor and supervisee; and
 - (C) are maintained for a minimum of five years.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, 37-17-320, MCA

REASON: The board is repealing ARM 24.189.607 and replacing it with this new rule which simplifies and updates language and reorganizes the provisions for simplicity and ease of use for the reader. The minimum qualifications have not been changed.

NEW RULE V CONTINUING EDUCATION (1) Board/staff will not preapprove continuing education (CE) programs or sponsors. Licensees must select activities from qualified providers that contribute to the licensee's professional knowledge and competence.

(2) Licensees must maintain adequate CE records for three years following a reporting period and make those records available upon request.

(3) Each reporting period, psychologists must obtain 40 CE hours, of which two are in ethics and one in suicide prevention. The two-year reporting period ends on the renewal date set by ARM 24.101.413 in odd-numbered years.

(a) Psychologists licensed less than two full calendar years on the first reporting date shall obtain 20 CE hours, including one in ethics and one in suicide prevention.

(b) Psychologists obtaining postdoctoral supervised experience are not required to obtain CE during the time of supervision.

(4) Psychologists can obtain a maximum of:

(a) 30 hours from:

(i) completion of an advanced credential;

(ii) study groups;

(iii) formally organized classes at regionally accredited higher education institutions;

(iv) initial presentation of a meeting paper;

(v) publication of a review paper;

(vi) research project reported in publishable form; and

(vii) formal case presentation in a group setting;

(b) 15 hours of personal growth activities in individual psychotherapy, group therapy, and specific supervision; and

(c) ten hours in practice management.

(5) Each reporting period, behavior analysts and assistant behavior analysts must obtain 20 CE hours, of which two are in ethics and one in suicide prevention. The two-year cycle ends on the renewal date set by ARM 24.101.413 in odd-numbered years.

(6) Behavior analysts and assistant behavior analysts can obtain a maximum of:

(a) five hours from:

(i) initial presentation of a meeting paper or workshop;

(ii) publication of a review paper;

(iii) conducting a research project reported in publishable form; and

(iv) teaching a formally organized class; and

(b) four hours in practice management.

(7) One hour will be granted for each hour of participation.

(8) No CE is required for licensees licensed less than one full calendar year on their first reporting date.

(9) CE hours cannot be carried over.

(10) Licensees found noncompliant with CE requirements may be subject to administrative suspension.

(11) Board members may receive up to eight hours of CE per calendar year for board meetings attendance.

(12) The department determines audit percentage based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

AUTH: 37-1-319, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: The board is repealing six lengthy rules and adopting this new rule to incorporate all continuing education (CE) provisions for all license types in a single location for simplicity and ease of use. As it is the licensees' responsibility to select appropriate CE programs that qualify per this rule, it is unnecessary to list "approved" providers or specific acceptable activities. The board is rewriting the CE standards to simplify and provide broader guidance as to acceptable CE content.

The board is further amending this rule for simplicity and standardization of department CE audit procedures. It is reasonably necessary to remove the general 50% maximum on random audits as it duplicates the language of 37-1-306, MCA. Since it is the department's audit unit that performs the random CE audits, the board is including (12) to clarify the numbers-based audit methodology.

NEW RULE VI BEHAVIOR ANALYST ETHICAL CODE OF CONDUCT

(1) The board adopts and incorporates by reference the Behavior Analyst Certification Board's (BACB) Ethics Code for Behavior Analysts (as effective January 1, 2022) and considers it to be the code of ethics governing the professional conduct of behavior analysts and assistant behavior analysts licensed by the board. Copies of the document are found at bacb.com.

(2) Behavior analysts and assistant behavior analysts shall follow the BACB Ethics Code in (1) unless it directly conflicts with Montana statutes or rules.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-316, 37-17-101, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to replace five lengthy rules on professional conduct for behavior analysts and assistant behavior analysts. The BACB ethical standards provide current, extensive guidance on behavior analysts' and assistant behavior analysts' conduct. It is confusing and unnecessary to duplicate individual provisions in administrative rule. The board will update the version of this code as necessary, utilizing proper rulemaking procedure.

NEW RULE VII PSYCHOLOGIST ETHICAL CODE OF CONDUCT (1) The board adopts and incorporates by reference the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (as effective June 1, 2003, and includes the June 1, 2010, and January 1, 2017, amendments) and considers it to be the code of ethics governing the professional conduct of psychologists licensed by the board. Copies of the document are found at apa.org/ethics/code.

(2) Psychologists shall follow the APA ethics code in (1) unless it directly conflicts with Montana statutes or rules.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-316, 37-17-101, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to replace five lengthy rules on professional conduct for psychologists. The APA ethical standards provide extensive guidance on psychologists' conduct and is utilized as the code of ethics by a number of other states. It is confusing and unnecessary to duplicate the code verbatim in administrative rule. The board will update the version of this code as necessary, utilizing proper rulemaking procedure.

NEW RULE VIII SUPERVISION -- ASSISTANT BEHAVIOR ANALYSTS AND BEHAVIOR TECHNICIANS (1) Supervisors shall:

(a) report to the board all supervisees within five business days of supervision commencement;

(b) assume professional and legal responsibility for all supervisees regardless of the type(s) of supervision;

(c) meet face-to-face with supervisees at least once a month for discussion, education, training, practice issues, and client care;

(d) enter into written supervision agreements with supervisees that must provide for appropriate:

(i) supervision methods;

(ii) scope of delegation of practice authority;

(iii) limitations on the supervisee's practice authority; and

(iv) frequency and duration of face-to-face meetings; and

(e) keep supervision agreements for seven years after termination of the supervision and provide a copy upon board or staff request.

(2) A behavior analyst may supervise:

(a) up to three student interns if also supervising behavior technicians or assistant behavior analysts; or

(b) up to seven student interns if not supervising behavior technicians or assistant behavior analysts.

AUTH: 37-17-406, MCA

IMP: 37-17-403, 37-17-405, 37-17-406, MCA

REASON: The board is repealing ARM 24.189.910 and replacing it with this new rule for simplicity, better organization, and ease of use. The board is eliminating the

types of allowable supervision as there is no longer a prohibited method and the licensed supervisor is expected to supervise according to accepted standards of practice.

Licensed supervisors are required to practice within the scope of their license and according to generally accepted standards of practice. As it is the supervisors' responsibility to instruct, train, and guide supervisees according to factors that are specific to each supervisory environment, it is unnecessary and not helpful to attempt to list all desired factors for the supervision or the written supervisory agreement.

NEW RULE IX TEMPORARY PERMITS (1) Applicants may be issued a temporary permit if the applicant:

(a) lacks only the examination for licensure; and
(b) works under the supervision of a Montana licensee of the same license type.

(2) Supervisors must:
(b) have at least three years licensure prior to the beginning of supervision;
and

(c) remain free of disciplinary actions during the supervisory period.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-305, 37-1-319, MCA

REASON: The board is repealing ARM 24.189.633 and replacing it with this new rule for simplicity, better organization, and ease of use for the reader. The board is also eliminating any unnecessary duplication of statutory provisions in rule.

Licensed supervisors are required to practice within the scope of their license and according to generally accepted standards of practice. As it is the supervisors' responsibility to instruct, train, and guide supervisees according to factors that are specific to each supervisory environment, it is unnecessary and not helpful to attempt to list all desired parameters for each supervision. Further, temporary permit holders are also expected to practice according to generally accepted standards of practice and within the specific supervision environment.

NEW RULE X ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

6. The rules proposed to be repealed are as follows:

24.189.205 BOARD MEETINGS

AUTH: 37-17-202, MCA

IMP: 37-17-201, 37-17-202, MCA

REASON: The board is repealing this rule as it unnecessarily duplicates standard department and board procedure for all board meetings. Additionally, the provisions conflict with 37-17-201, MCA, which requires selection of a presiding officer and secretary as board officers.

24.189.411 USE OF TITLE

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-104, 37-17-301, MCA

REASON: The board is repealing this rule as unnecessary and overbroad. Per 37-17-301 and 37-17-102(5), MCA, a license is needed to use certain titles while offering psychological services in Montana. Further, certain individuals, such as psychology students, are exempt from the licensure requirement in certain circumstances per 37-17-104, MCA. Because these two statutes provide adequate guidance on use of title and exemption from licensure, it is not necessary to specify useable titles for non-licensees. Additionally, the board has the ability to discipline any licensee for use of an inappropriate title as conduct beyond generally accepted standards of practice.

24.189.415 REQUIREMENTS FOR LICENSEES PROVIDING
TELEHEALTH SERVICES

AUTH: 37-1-131, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-17-102, 37-17-402, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE I to streamline and simplify the regulations on telehealth practice. In 2021, the Montana

legislature passed SB 357 which provides telehealth guidelines for all health care licensees of Title 37, MCA, at 37-2-305, MCA. Because the statute provides greater and more specific guidance for practicing via telehealth methods, it is no longer necessary to have such specific requirements in board rules.

24.189.603 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.189.604 MINIMUM STANDARDS

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA
IMP: 37-1-131, 37-17-302, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE II. See REASON for NEW RULE II.

24.189.607 REQUIRED SUPERVISED EXPERIENCE

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-1-131, 37-17-302, 37-17-320, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE IV. See REASON for NEW RULE IV.

24.189.625 LICENSURE OF FOREIGN-TRAINED PSYCHOLOGISTS

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-1-131, 37-17-302, 37-17-309, MCA

REASON: The board is repealing this rule as unnecessary and outdated. All psychologist applicants must satisfy minimum licensure qualifications of 37-17-302, MCA. Additionally, per 37-17-309, MCA, foreign-trained applicants must have their educational transcripts reviewed by a board-approved evaluator to determine equivalency of credits and study areas. Applicants with equivalent education who complete the supervised experience and pass the required examination will have

demonstrated adequately proficient communication skills and "proving" them via an English proficiency examination is unnecessary.

24.189.633 TEMPORARY PERMIT

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-305, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE IX. See REASON for NEW RULE IX.

24.189.901 BEHAVIOR ANALYST APPLICATION PROCEDURES

AUTH: 37-1-131, 37-17-406, MCA

IMP: 37-1-131, 37-17-403, 37-17-406, MCA;

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates standardized application procedures utilized for all licensing boards.

24.189.904 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, 37-17-406, MCA

IMP: 37-1-145, 37-17-406, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.189.907 ASSISTANT BEHAVIOR ANALYST APPLICATION PROCEDURES

AUTH: 37-1-131, 37-17-406, MCA

IMP: 37-1-131, 37-17-403, 37-17-405, 37-17-406, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates standardized application procedures utilized for all licensing boards.

24.189.910 BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

AUTH: 37-17-406, MCA

IMP: 37-17-403, 37-17-405, 37-17-406, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE VIII. See REASON for NEW RULE VIII.

24.189.911 NONROUTINE BEHAVIOR ANALYST OR ASSISTANT BEHAVIOR ANALYST APPLICATIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

REASON: See REASON for ARM 24.189.613.

24.189.912 BEHAVIOR ANALYST OR ASSISTANT BEHAVIOR ANALYST APPLICANTS WITH CRIMINAL CONVICTIONS

AUTH: 37-1-131, MCA
IMP: 37-1-101, 37-1-131, MCA

REASON: See REASON for ARM 24.189.614.

24.189.913 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-319, 37-17-406, MCA
IMP: 37-1-306, 37-1-319, 37-17-406, MCA

REASON: The board is repealing this rule, ARM 24.189.916, and 24.189.919 and combining relevant provisions into NEW RULE V. The new rule will contain all continuing education provisions for all license types.

24.189.916 CONTINUING EDUCATION REPORTING AND AUDIT

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-17-406, MCA

24.189.919 CONTINUING EDUCATION PROGRAM OPTIONS

AUTH: 37-1-319, 37-17-202, 37-17-406, MCA
IMP: 37-1-306, 37-17-406, MCA

24.189.922 REPRESENTATION OF SELF AND SERVICES

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA
IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-405, 37-17-406, MCA

REASON: The board is repealing this rule and ARM 24.189.925, 24.189.928, 24.189.931, and 24.189.934 and replacing them with NEW RULE VI regarding behavior analysts' and assistant behavior analysts' professional conduct.

24.189.925 PRACTICE OF BEHAVIOR ANALYSIS

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-403, 37-17-405, 37-17-406,
MCA

24.189.928 PROFESSIONAL RESPONSIBILITY

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-405, 37-17-406, MCA

24.189.931 RELATIONSHIPS

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-406, MCA

24.189.934 PRIVILEGED INFORMATION AND RECORDS

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-406, MCA

24.189.2101 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-319, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: The board is repealing this rule, ARM 24.189.2104, and 24.189.2107 and incorporating the relevant provisions into a single CE rule, NEW RULE V, to apply to all board licensees.

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

24.189.2107 CONTINUING EDUCATION REPORTING AND AUDIT

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

24.189.2301 REPRESENTATION OF SELF AND SERVICES

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-17-101, 37-17-320, MCA

REASON: The board is repealing this rule, ARM 24.189.2305, 24.189.2309, 24.189.2314, and 24.189.2318 and replacing them with NEW RULE VII regarding psychologists' professional conduct.

24.189.2305 PRACTICE OF PSYCHOLOGY

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-17-101, MCA

24.189.2309 PROFESSIONAL RESPONSIBILITY

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-17-101, MCA

24.189.2314 RELATIONSHIPS

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-17-101, MCA

24.189.2318 PRIVILEGED INFORMATION AND RECORDS

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-17-101, MCA

24.189.2405 SCREENING PANEL

AUTH: 37-17-202, MCA

IMP: 37-1-307, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as the provisions are procedural and it is the board chair's responsibility to establish and alter the screening and adjudication panels to facilitate the disciplinary process most efficiently.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., November 17, 2023.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 4, 2023, by electronic mail.

11. Pursuant to 2-4-111, MCA, the board has determined that the fee reductions proposed to ARM 24.189.401 will significantly and directly impact small businesses. The group of small businesses affected are employers that pay licensure fees for their employed psychologists, behavior analysts, and assistant behavior analysts. The fee changes will reduce the financial burden on these employers for employing board licensees. The board has no alternative methods for reducing licensure fees.

The board has determined that the remaining rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
SARA BOILEN, PSY.D., CHAIR

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.222.401, 24.222.509, and	)	PROPOSED AMENDMENT,
24.222.904, the adoption of NEW	)	ADOPTION, AND REPEAL
RULES I through IX, and the repeal of	)	
ARM 24.222.301, 24.222.502,	)	
24.222.504, 24.222.506, 24.222.510,	)	
24.222.513, 24.222.520, 24.222.525,	)	
24.222.701, 24.222.703, 24.222.706,	)	
24.222.907, 24.222.910, 24.222.913,	)	
24.222.916, 24.222.920, 24.222.2102,	)	
and 24.222.2301, pertaining to the	)	
board of speech-language	)	
pathologists and audiologists	)	

TO: All Concerned Persons

1. On November 14, 2023, at 8:30 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/84486988365>

Meeting ID: 844 8698 8365, Passcode: 678383

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: 844 8698 8365, Passcode: 678383

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 7, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2021 Montana Legislature enacted House Bill (HB) 210, an act providing for the licensure of speech-language pathology assistants or audiology assistants. The bill provided minimum licensure qualifications for assistants, including passage of a board-approved examination equal to or greater than generally accepted national standards. It was subsequently discovered that no national examination was available to Montana applicants. The board then sought vendors to develop an examination in two requests for proposal but received no responses. It was decided

to consider legislation in the 2023 session to eliminate the examination requirement and align assistants' licensure requirements with current national standards.

The 2023 Montana Legislature enacted Chapter 457, Laws of 2023 (Senate Bill (SB) 300), an act revising qualifications for licensure as speech-language pathology assistants or audiology assistants. The bill was signed by the Governor on May 8, 2023, and will be effective on January 1, 2024. The board is adopting two new rules and amending certain existing rules to implement the legislation by updating language and establishing licensure standards for assistants.

The 2023 Montana Legislature enacted Chapter 349, Laws of 2023 (SB 214), an act enacting the audiology and speech-language pathology interstate compact. The bill was signed by the Governor on May 2, 2023, and will be effective on October 1, 2023. The board is amending certain existing rules to implement the legislation and coordinate with the compact's statutory language.

The 2021 Montana Legislature enacted Chapter 497, Laws of 2021 (SB 357), an act that generally revised laws relating to the provision of telehealth services in Montana. The bill was signed by the Governor on May 12, 2021, and became effective October 1, 2021. The board is amending and repealing several rules to implement the bill.

In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff.

It is reasonably necessary to amend the authority and implementation citations to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The board is proposing to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.222.401 FEES (1) remains the same.

(2) Fees are:

(a) limited license (speech-language pathologist):

(i) application \$ ~~27~~ 25

(b) speech-language pathologist:

(i) application ~~192~~ 150

(ii) annual renewal of active license ~~140~~ 80

(iii) placement of license on inactive status ~~55~~ 40

(iv) annual renewal of inactive license ~~55~~ 40

(c) audiologist:

(i) application ~~192~~ 150

(ii) annual renewal of active license	140 <u>80</u>
(iii) placement of license on inactive status	~~55~~ <u>40</u>
(iv) annual renewal of inactive license	~~55~~ <u>40</u>
(d) speech-language pathologist and audiologist (dual license):	
(i) initial application	192 <u>150</u>
(ii) annual renewal of active license	140 <u>80</u>
(iii) placement of license on inactive status	~~55~~ <u>40</u>
(iv) annual renewal of inactive license	~~55~~ <u>40</u>
~~(e) aide or assistant annual registration~~	~~30~~
(e) speech-language pathology or audiology assistant:	
(i) application	<u>50</u>
(ii) annual renewal of active license	<u>25</u>
(iii) placement of license on inactive status	<u>20</u>
(iv) annual renewal of inactive license	<u>20</u>
(3) remains the same.	

AUTH: 37-1-134, 37-15-202, MCA

IMP: 37-1-134, 37-1-141, 37-15-307, MCA

REASON: The board determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, and ensure that the board's fees related to its program area will provide the amount of money usually needed for the operation of the board for services. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. Therefore, the board is proposing these amendments to reduce application and renewal fees for all license types by 25%. This reduction will allow the board to gradually reduce its cash balance and stay in compliance with statutory requirements while ensuring adequate revenue to support board activities through the next biennium.

The board is also amending this rule to add application and renewal fees for speech-language pathology and audiology assistants to adequately fund the costs of implementing HB 210 (2021). The board estimates the fee reductions and new fees will affect approximately 1,223 licensees and applicants and result in a \$16,663 reduction in annual revenue.

24.222.509 SUPERVISED PROFESSIONAL EXPERIENCE (1) and (2) remain the same.

(3) "Professional experience supervisor" means the Montana licensed speech-language pathologist who supervises a Montana limited license holder during the required supervised professional experience. The supervisor must have:

(a) a Montana license in good standing; and
(b) been licensed for at least two years, excluding any period of licensure under a limited license.

~~(3) The limited licensee and professional experience supervisor must both notify the board ten days prior to any change in supervisor.~~

~~(4) Per ARM 24.222.2301, the supervisor may be subject to disciplinary action for failure to adequately supervise the limited licensee.~~

AUTH: 37-1-131, 37-15-202, 37-15-301, 37-15-303, MCA
IMP: 37-1-131, 37-15-301, 37-15-303, MCA

REASON: The board is relocating the supervisor qualifications to this rule from ARM 24.222.301 which is proposed for repeal. It is reasonably necessary to strike the notification provision from this rule and move it to NEW RULE V that applies to multiple license types. The board is striking (4) as it is addressed in NEW RULE VIII.

24.222.904 PROVISION OF TELEPRACTICE TELEHEALTH SERVICES

~~(1) The provision of speech-language pathology or audiology services in this state through telepractice, regardless of the physical location of the speech-language pathologist or audiologist, constitutes the practice of speech-language pathology or audiology and is subject to state licensure requirements and regulation by the board.~~

(1) Licensees providing telehealth services must do so within the parameters of 37-2-305, 37-15-314, and 37-15-315, MCA, and board rules.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

REASON: It is reasonably necessary to amend this rule and repeal ARM 24.222.907, 24.222.910, 24.222.913, 24.222.916, and 24.222.920 to implement statutory changes from SB 357 in 2021 and avoid unnecessary duplication of statutory provisions in rule. The bill changed "telepractice" to "telehealth" and amended the statutes to provide adequate guidance on the methods of providing speech-language pathology and audiology services via telehealth.

5. The proposed new rules are as follows:

NEW RULE I SPEECH-LANGUAGE PATHOLOGIST AND AUDIOLOGIST
LICENSURE – INITIAL APPLICANTS

(1) All speech-language pathologist and audiologist applicants for licensure must submit fingerprints to obtain a criminal background check per 37-15-402, MCA.

(2) Applicants for licensure through the Audiology and Speech-Language Pathology Interstate Compact with Montana as home state must meet licensure requirements per 37-15-401, MCA.

(3) Applicants for a Montana single-state speech-language pathologist license must:

(a) have a minimum of a master's degree in speech-language pathology or communication disorders from a program accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association or its equivalent;

(b) during the graduate degree program, have completed a supervised clinical practicum experience;

(c) following graduation from the post-graduate degree program, have completed a 36-week speech-language pathology supervised professional experience; and

(d) have passed the national Praxis examination in speech-language pathology or its equivalent.

(4) Applicants for a Montana single-state audiologist license must:

(a) have a minimum of a Doctor of Audiology degree (Au.D.) or a Ph.D. in audiology from a program accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association, Accreditation Commission for Audiology Education (ACAE), or equivalent; and

(b) have passed the national Praxis examination in audiology or its equivalent.

(5) An audiologist licensed prior to January 1, 2007, who maintains that license in good standing is not required to obtain a doctorate.

AUTH: 37-1-131, 37-15-202, 37-15-303, MCA

IMP: 37-1-131, 37-15-301, 37-15-303, 37-15-401, 37-15-402, MCA

REASON: The board is repealing ARM 24.222.502 and replacing it with this new rule to streamline and simplify for ease of use by the reader. The board is amending initial licensure requirements for speech-language pathologists and audiologists to implement SB 214. The changes will incorporate licensure by the Audiology and Speech-Language Pathology Interstate Compact (compact) and differentiate between compact and Montana single-state licensure. It is necessary to add the new requirement for all audiologist and speech-language pathologist applicants, compact and single-state, to pass a criminal background check, also per SB 214.

The board is striking language referring to specific forms of proof of meeting licensure requirements as they are adequately addressed in standard application procedures. ASHA certification (certificate of clinical competence) is a primary source verifiatory that proves applicants meet the degree, examination, and supervised work experience requirements. Application staff will still check for ASHA certification, but it does not need to be specified in rule.

The board is repealing ARM 24.222.510 and incorporating the required licensure examinations into this rule for simplicity and ease of use.

The board is striking the application deadline language as this is addressed in standardized department application procedures.

NEW RULE II SPEECH-LANGUAGE PATHOLOGIST AND AUDIOLOGIST LICENSURE – OUT-OF-STATE APPLICANTS (1) Applicants for licensure as speech-language pathologists or audiologists currently licensed in another state or jurisdiction must:

(a) hold a current, active license in good standing to practice speech-language pathology or audiology in a state or jurisdiction which standards at the time of application are substantially equivalent to Montana's standards; and

(b) submit fingerprints to obtain a criminal background check per 37-15-402, MCA.

(2) An audiologist currently licensed in another state or jurisdiction prior to January 1, 2007, will not be required to obtain a doctorate if the license was issued under standards substantially equivalent to current standards in Montana.

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-304, 37-15-402, MCA

REASON: The board is repealing ARM 24.222.506 and replacing it with this new rule to streamline and simplify for ease of use by the reader. The only new requirement is that of the criminal background check for all speech-language pathologist and audiologist applicants as required by SB 214.

The board is striking language referring to specific forms of proof of meeting licensure requirements as they are adequately addressed in standard application procedures. ASHA certification (certificate of clinical competence) is a primary source verifiatory that proves applicants meet the degree, examination, and supervised work experience requirements. Application staff will still check for ASHA certification, but it does not need to be specified in rule.

The board is removing the application deadline language as this is addressed in standardized department application procedures.

NEW RULE III ASSISTANT LICENSURE – INITIAL APPLICANTS (1) To practice as a licensed speech-language pathology or audiology assistant in Montana, all assistants must have at least one Montana licensed practitioner of the same profession to supervise the assistant per 37-15-102, MCA.

(2) Speech-language pathology assistant applicants not currently licensed in another state or jurisdiction and who did not serve as unlicensed aides or assistants in Montana prior to January 1, 2024, must have either:

(a) a baccalaureate degree in speech-language pathology or communication sciences and disorders from an accredited institution; or

(b) a speech-language pathology assistant certificate or associate degree from an accredited institution.

(3) Speech-language pathology assistant applicants not currently licensed in another state or jurisdiction and who served as unlicensed aides or assistants in Montana prior to January 1, 2024, but do not meet the requirements in (2)(a) or (b) must have a minimum of 690 hours of practical experience under the supervision of a speech-language pathologist.

(4) Audiology assistant applicants not currently licensed in another state or jurisdiction and who did not serve as unlicensed aides or assistants in Montana prior to January 1, 2024, must have either:

(a) a baccalaureate degree in communication sciences and disorders from an accredited institution;

(b) an audiology assistant certificate or associate degree from an accredited institution; or

(c) a high school diploma or equivalent and a minimum of 10 hours of additional board-approved training in audiology.

(5) Audiology assistant applicants not currently licensed in another state or jurisdiction and who served as unlicensed aides or assistants in Montana prior to

January 1, 2024, but do not meet the requirements in (4)(a), (b), or (c) must have a minimum of 110 hours of practical experience under the supervision of an audiologist.

AUTH: 37-15-303, MCA

IMP: 37-15-303, MCA

REASON: It is reasonably necessary to adopt this new rule to implement HB 210 (2021) and SB 300 (2023) providing for the licensing of speech-language pathology and audiology assistants. This new rule clearly sets forth the minimum qualifications for assistants obtaining initial licensure.

NEW RULE IV ASSISTANT LICENSURE – OUT-OF-STATE APPLICANTS

(1) To practice as a licensed speech-language pathology or audiology assistant in Montana, all assistants must have at least one Montana licensed practitioner of the same profession to supervise the assistant per 37-15-102, MCA.

(2) Applicants for speech-language pathology assistant and audiology assistant licensure currently licensed in another state or jurisdiction must hold a current, active license in good standing to practice as a speech-language pathology assistant or audiology assistant in a state or jurisdiction which standards at the time of application are substantially equivalent to Montana's standards.

AUTH: 37-1-131, 37-15-303, MCA

IMP: 37-1-304, 37-15-303, MCA

REASON: It is reasonably necessary to adopt this new rule to implement HB 210 (2021) and SB 300 (2023) providing for the licensing of speech-language pathology and audiology assistants. This new rule clearly sets forth the minimum qualifications for assistant applicants holding licensure in other states.

NEW RULE V CHANGE OF SUPERVISOR (1) Speech-language pathology and audiology assistants must notify the board within ten days of any change in supervisor.

(2) Limited licensees and professional experience supervisors must both notify the board within ten days of any change in supervisor.

AUTH: 37-15-202, 37-15-301, MCA

IMP: 37-15-102, 37-15-301, MCA

REASON: It is reasonably necessary to adopt this new rule to implement SB 300 (2023) by ensuring that the board is aware of current supervisors for all licensed speech-language pathology and audiology assistants.

The board is relocating similar language from ARM 24.222.509 to (2) regarding limited licensees and their supervisors.

NEW RULE VI INACTIVE LICENSE -- CONVERSION TO ACTIVE

(1) Licenses may be placed on inactive status by paying the appropriate fee

and:

- (a) indicating inactive status on the renewal form; or
- (b) informing the board office in writing or e-mail.
- (2) Inactive licensees shall:
 - (a) renew annually; and
 - (b) inform the board of all address/contact changes.
- (3) Inactive status licensees may not practice in Montana.
- (4) To convert from inactive to active, a licensee must submit:
 - (a) documentation demonstrating completion of half the continuing education hours required in ARM 24.222.2102 for each year or portion of a year on inactive status;
 - (b) license verification from all jurisdictions where the licensee held a license while inactive, including a detailed explanation of all pending or final discipline imposed; and
 - (c) satisfactory evidence the applicant was not out of active practice for more than five years.

AUTH: 37-1-319, MCA

IMP: 37-1-319, MCA

REASON: The board is repealing ARM 24.222.513 and replacing it with this rewritten new rule to simplify and streamline the process for converting to and from inactive licensure. While most of the requirements remain the same, the board is striking the statement of intent to practice in Montana as unnecessary and unenforceable.

NEW RULE VII CONTINUING EDUCATION (1) Licensees must obtain the following continuing education (CE) hours annually, prior to renewal:

- (a) ten hours for speech-language pathology or audiology;
- (b) 15 hours for dual licensure in speech-language pathology and audiology, with at least five hours each in speech-language pathology and audiology; or
- (c) five hours for speech-language pathology or audiology assistants.
- (2) Continuing education requirements do not apply until a licensee's first full year of licensure.
- (3) Board/staff will not preapprove CE programs or sponsors. Licensees must select quality programs that:
 - (a) contribute to professional knowledge and competence;
 - (b) contain significant intellectual or practical content; and
 - (c) are germane to the licensed profession.
- (4) All licensees shall affirm an understanding of their recurring duty to comply with CE requirements as part of annual license renewal.
- (5) Licensees must maintain CE documentation and make the documentation available upon request. Documentation must include:
 - (a) licensee name;
 - (b) presenter or sponsor;
 - (c) course title and/or description of content;
 - (d) course date(s); and

- (e) number of CE hours earned.
- (6) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.
- (7) Any CE hours required by disciplinary order do not apply toward hours required annually.
- (8) The department, with respect to any CE audit it performs, shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-306, MCA

REASON: The board is repealing ARM 24.222.2102 and replacing it with this new rule to simplify and standardize with procedures used by all licensing boards. Further, the board is adding minimal CE requirements for licensed speech-language pathology and audiology assistants.

The board is amending the CE standards in (3) to simplify and provide broader guidance as to acceptable CE content. The board is striking the general 50% maximum on random audits as it duplicates the language of 37-1-306, MCA. Since it is the department's audit unit that performs the random CE audits, the board is including (8) to clarify the numbers-based methodology of the random audits.

NEW RULE VIII UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-316, MCA, the board defines unprofessional conduct as follows:

- (a) violating a federal, state, or local law or rule relating to the conduct of the profession;
- (b) practicing outside the licensee's area of training, expertise, competence, or scope of practice;
- (c) failure to refer a patient to another professional when warranted;
- (d) guaranteeing the results of any speech or hearing therapeutic procedure;
- (e) failing to adequately supervise assistants, auxiliary staff, or limited license holders according to generally accepted standards of practice;
- (f) failure to cooperate with a board inspection or investigation;
- (g) failure to report unsafe, unethical, or unlicensed practice to the appropriate board;
- (h) failure to maintain appropriate patient records as required by state and federal regulations; and
- (i) failure to provide records when requested to do so by the patient or legally designated representative.

AUTH: 37-1-319, 37-15-202, MCA

IMP: 37-1-316, 37-1-319, 37-15-202, MCA

REASON: It is reasonably necessary to repeal ARM 24.222.2301 and replace the outdated provisions with this streamlined new rule. The board is simplifying the rule by replacing overly specific language with more broadly applicable statements to

facilitate use by the reader and eliminate the more detailed "laundry list." These amendments will also facilitate the board's disciplinary processes by utilizing standard language among the licensing boards and programs.

The board is striking failure to report unsafe practice to facilities since the board does not regulate facilities and the provision is unnecessary and unenforceable.

NEW RULE IX ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

6. The rules proposed to be repealed are as follows:

24.222.301 DEFINITIONS

AUTH: 37-1-131, 37-15-202, 37-15-301, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-301, 37-15-303, 37-15-313, MCA

REASON: It is reasonably necessary to repeal this rule following elimination of most of the rule's definitions. The board is deleting the definitions of "asynchronous" and "synchronous," and (2), (5), and (6) to align with the legislative changes regarding assistant licensure and telehealth. "Assistants" are defined in 37-15-102, MCA, and "aides" were removed from statute in 2021.

It is reasonably necessary to delete "certificate of clinical competence" to align with current application procedures as expressed in NEW RULES I and II.

The definition of "professional experience supervisor" is being relocated to ARM 24.222.509 as a more logical location.

24.222.502 SPEECH-LANGUAGE PATHOLOGIST AND AUDIOLOGIST LICENSES

AUTH: 37-1-131, 37-15-202, 37-15-303, MCA

IMP: 37-1-131, 37-15-301, 37-15-303, MCA

REASON: The board is repealing ARM 24.222.502 and replacing it with NEW RULE I to streamline and simplify for ease of use by the reader. See REASON for NEW RULE I.

24.222.504 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (HB 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.222.506 LICENSURE OF OUT-OF-STATE APPLICANTS

AUTH: 37-1-131, MCA

IMP: 37-1-304, MCA

REASON: The board is repealing ARM 24.222.506 and replacing it with NEW RULE II to streamline and simplify for ease of use by the reader. See REASON for NEW RULE II.

24.222.510 EXAMINATIONS

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-303, MCA

REASON: The board is repealing this rule and incorporating the relevant provisions into NEW RULE I to align with current national exam processes and eliminate the jurisprudence exam as a licensure requirement. All licensees are required to know and adhere to all board statutes and administrative rules. Requiring an exam that only calls out certain regulations does not lead to greater compliance with the regulations or enhance the public's protection. The board concluded that striking the

jurisprudence exam will also eliminate unnecessary costs and delays in the application process.

Speech-language pathology and audiology assistants have no examination required for licensure, per SB 300.

24.222.513 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA

IMP: 37-1-319, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE VI to simplify and streamline the process for converting to and from inactive status licensure. While most of the requirements remain the same, the board is striking the statement of intent to practice in Montana as unnecessary and unenforceable.

24.222.520 SPEECH-LANGUAGE PATHOLOGY SCOPE OF PRACTICE

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-15-102, MCA

REASON: The board is repealing this rule and ARM 24.222.525 as unnecessary and overly regulatory. These two scope of practice rules were adopted in 2006, following a bill that generalized the statutory speech-language pathology and audiology practice definitions by removing specific permissive activities. The board has not reviewed or updated the "laundry lists" of these scope of practice rules in 17 years.

Since the adoption of these rules, decisions by the Federal Trade Commission have focused on minimally restrictive licensure regulations so as to avoid restraint of trade. This approach is supported by Governor Gianforte's Red Tape Relief Initiative for agencies to analyze, update, and repeal all unnecessary and overly burdensome professional licensure rules. Additionally, it is impossible to list every allowable activity and function within the scope of the board's licensees at any point in time. Any attempted list is outdated upon adoption.

Therefore, it is reasonably necessary to repeal these two rules and allow the board's licensed professionals to practice within their particular training, education, and experience and the professions' generally accepted standards of practice. The board has the authority to discipline licensees for practicing outside of these standards.

24.222.525 AUDIOLOGY SCOPE OF PRACTICE

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-15-102, MCA

24.222.701 GENERAL REGISTRATION AND AIDE/ASSISTANT SUPERVISION REQUIREMENTS

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-313, MCA

REASON: It is reasonably necessary to repeal this rule, ARM 24.222.703, and 24.222.706 as HB 210 (2021) repealed 37-15-313, MCA, and eliminated the registration of unlicensed aides and assistants. Per SB 300 (2023), speech-language pathology and audiology assistants will now be licensed.

24.222.703 PROHIBITED SERVICES – SPEECH-LANGUAGE
PATHOLOGY AIDES/ASSISTANTS

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-313, 37-15-314, MCA

24.222.706 PROHIBITED SERVICES – AUDIOLOGY AIDES/ASSISTANTS

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-313, 37-15-314, MCA

24.222.907 LIMITS ON TELEPRACTICE

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

REASON: The board is repealing this rule, ARM 24.222.910, 24.222.913, 24.222.916, and 24.222.920 to implement SB 357 (2021) and avoid unnecessary duplication of statutory provisions in rule. The bill changed "telepractice" to "telehealth" and amended the statutes to provide adequate guidance on the methods of providing speech-language pathology and audiology services via telehealth. See also the REASON for amending ARM 24.222.904.

24.222.910 DELIVERY OF TELEPRACTICE SERVICES

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

24.222.913 QUALITY OF TELEPRACTICE SERVICES

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

24.222.916 ESTABLISHING THE PRACTITIONER-PATIENT
RELATIONSHIP

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

24.222.920 COMPETENCE – PRACTICE LIMITS – MAINTENANCE AND RETENTION OF RECORDS

AUTH: 37-1-131, 37-15-202, MCA

IMP: 37-1-131, 37-15-102, 37-15-202, 37-15-314, 37-15-315, MCA

24.222.2102 CONTINUING EDUCATION – SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-306, MCA

REASON: It is reasonably necessary to repeal this rule and replace it with NEW RULE VII. The new rule will apply to all licensees and has been simplified and aligned with current procedures and recent legislation.

24.222.2301 UNPROFESSIONAL CONDUCT

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-15-202, MCA

REASON: It is reasonably necessary to repeal this rule and replace the outdated provisions with NEW RULE VIII. The board is simplifying the rule by replacing overly specific language with more broadly applicable statements to assist use by the reader. Additionally, these amendments will facilitate the board's disciplinary processes by utilizing standard language among the licensing boards.

The board is striking failure to report unsafe practice to facilities since the board does not regulate facilities and the provision is unnecessary and unenforceable.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., November 17, 2023.

8. An electronic copy of this notice of public hearing is available at sosmt.gov/ARM/register.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on May 17, 2021 (HB 210) and May 4, 2023 (SB 214, SB 300, and SB 357), all by electronic mail.

11. Pursuant to 2-4-111, MCA, the board has determined that the fee reductions proposed to ARM 24.222.401 will significantly and directly impact small businesses. The group of small businesses affected are rural hospitals, small clinics, and private practices that pay licensure fees for their employed speech-language pathologists, audiologists, and assistants. The fee changes will reduce the financial burden on these employers for employing board licensees. The board has no alternative methods for reducing licensure fees.

The board has determined that the remaining rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
KELSEY MANN, BOARD PRESIDING
OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.435 pertaining to Testing	)	AMENDMENT
Within the DSA	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 13, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N Roberts St., Room 304, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.3.435 TESTING WITHIN THE DSA (1) remains the same.

(2) A test completed July 16 or after is acceptable for movement out of the DSA or change of ownership through February 15 of the following year.

~~(2)~~(3) Animals entering the DSA for summer grazing may be tested upon return to their origin location. Testing must be done within 10 days and animals may not be commingled with other livestock until testing is complete.

~~(3)~~(4) Other variances or exceptions to requirements will be considered on an individual basis by the administrator based on a brucellosis herd management agreement.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-111, MCA

REASON: The department proposes to amend the above-stated rule to correct to a previous rule change that failed to include the extended duration of brucellosis test validity during the period of minimal wildlife spillover transmission to livestock risk from July 16 to February 15. The allowance of a long test duration validity outside of the risk period is a longstanding and foundational part of Montana's brucellosis program, consistent with no test requirement for animals that use the DSA outside of the risk period.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Director at the above address no later than 5:00 p.m., November 13, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 45 persons based on approximately 450 identified DSA producers.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of October 10, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
32.6.201, 32.6.202, 32.6.203,	)	
32.6.204, 32.6.205, and 32.6.206	)	NO PUBLIC HEARING
pertaining to Garbage Feeding	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to repeal the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Livestock no later than 5:00 p.m. on November 13, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N Roberts St., Room 304, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

3. The department proposes to repeal the following rules:

32.6.201 APPLICATION FOR GARBAGE FEEDER'S LICENSE

AUTH: 81-2-504, MCA
IMP: 81-2-502, MCA

32.6.202 SANITARY CONSTRUCTION OF VEHICLES, CONTAINERS AND
FACILITIES USED IN MOVEMENT AND PROCESSING OF GARBAGE FOR
FEEDING

AUTH: 81-2-504, MCA
IMP: 81-2-504, MCA

32.6.203 COOKING REQUIREMENTS

AUTH: 81-2-504, MCA
IMP: 81-2-504, 81-2-505, 81-2-509, MCA

32.6.204 FEEDING AREAS SEPARATE

AUTH: 81-2-504, MCA
IMP: 81-2-504, MCA

32.6.205 RECORDS KEPT - AVAILABILITY FOR INSPECTION

AUTH: 81-2-504, MCA
IMP: 81-2-505, MCA

32.6.206 DISPOSAL OF GARBAGE FED ANIMALS - INSPECTION
BEFORE SALE

AUTH: 81-2-102, 81-2-504, MCA
IMP: 81-2-504, 81-2-505, MCA

REASON: The department proposes to repeal the above-stated rules to conform with HB 84, carried by Representative Walsh and passed by the 2023 Montana State Legislature, which prohibits garbage feeding to swine and other animals.

4 Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Director at the above address no later than 5:00 p.m., November 13, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be zero based on no persons being licensed garbage feeders and HB 84 has made the practice illegal.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on October 5, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 32.2.401 pertaining to Animal) AMENDMENT
Health Division Fees)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodation for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 13, 2023, to advise us of the nature of the accommodation that you need. Please contact Executive Officer, Department of Livestock, 301 N Roberts St., Room 304, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9525; fax (406) 444-4316; TDD/Montana Relay Service 1 (800) 253-4091; or e-mail MDOLcomments@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

<u>32.2.401 DEPARTMENT OF LIVESTOCK ANIMAL HEALTH DIVISION</u>		
<u>FEES</u>	(1) Certifications:	
	(a) Brucella ovis-free flocks certification - new	\$40.00
	(b) Brucella ovis-free flocks certification - renewal	18.00
	(2) Licenses:	
	~~(a) Garbage feeder license - new~~	~~\$170.00~~
	~~(b) Garbage feeder license - renewal~~	~~50.00~~
	~~(c)~~ <u>(a)</u> Licensed equine-approved feedlot	<u>\$1450.00</u>
	~~(d)~~ <u>(b)</u> Montana bull stud service	350.00
	~~(e)~~ <u>(c)</u> Rendering or disposal plant license	5.00
	~~(f)~~ <u>(d)</u> Trichomoniasis feedlot license - new	100.00
	~~(g)~~ <u>(e)</u> Trichomoniasis feedlot license - renewal	12.00
	~~(h)~~ <u>(f)</u> Pullorum <u>NPIP</u> authorized testing agent license	50.00
	(3) Permits:	
	~~(a) Annual NPIP poultry permit~~	~~\$4.00~~
	~~(b)~~ <u>(a)</u> Biologics, conditional - new	<u>\$30.00</u>
	~~(c)~~ <u>(b)</u> Biologics, conditional - renewal	10.00
	~~(d) Biologics, unconditional~~	~~10.00~~
	~~(e)~~ <u>(c)</u> Bovine semen, annual - domestic	4.00
	~~(f)~~ <u>(d)</u> Bovine semen, annual - international	42.00
	~~(g)~~ <u>(e)</u> Cross border grazing - new	37.00

(h) ~~(f)~~ Cross border grazing - renewal	14.00
(i) ~~Equine permit, annual~~	5.00
(j) ~~(g)~~ Equine semen, annual	7.00
(k) ~~Six-month horse passport~~	5.00
(4) Forms and tags:	
(a) ~~Alternative livestock tags - deer (small)~~	\$27.50
(b) ~~(a)~~ Alternative livestock tags - elk (medium)	64.50 \$1.68 each
(c) ~~(b)~~ SV-7 - large animal cvi book	32.00 1.50 each
(d) ~~SV-7A - cvi convoy replica book~~	38.00
(e) ~~SV-7B - cvi continuation pages~~	37.00
(f) ~~(c)~~ SV-7GF - alternative livestock cvi book	20.00
(g) ~~(d)~~ SV-7GFc - alternative livestock continuation	15.00
(h) ~~SV-7HP - 6-month horse passport book~~	55.00
(i) ~~SV-69A - trichomoniasis test report~~	37.00
(j) ~~(e)~~ Trichomoniasis tags (50)	8.35 83.50
(k) ~~Trichomoniasis tags (10)~~	16.70
(l) ~~Trichomoniasis tags (25)~~	41.75

AUTH: 81-2-102, MCA

IMP: 81-1-102, 81-2-502, 81-2-704, MCA

REASON: The department proposes to amend the above-stated rule to remove licenses, permits, and forms that are no longer offered by the department and to update available quantities and pricing of some remaining forms and tags. Per 81-1-102, MCA, all fees are commensurate with costs and no fiscal impacts are expected.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Livestock, P.O. Box 202001, Helena, Montana, 59620-2001; telephone (406) 444-9321; fax (406) 444-1929; or e-mail MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Executive Director at the above address no later than 5:00 p.m., November 13, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be zero persons based on the amended items being no longer offered by the department or are simply updates to available quantities of items for purchase.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Darcy Alm
Darcy Alm
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Director
Department of Livestock

Certified to the Secretary of State October 10, 2023.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 36.22.1242 pertaining to reports) AMENDMENT
by producers, tax report, and tax rate)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On December 6, 2023, the Department of Natural Resources and Conservation (department) and the Board of Oil and Gas Conservation (board) propose to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than November 3, 2023, to advise us of the nature of the accommodation that you need. Please contact Ben Jones, Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, MT 59102, telephone (406) 656-0040, or e-mail mtogpub@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.22.1242 REPORTS BY PRODUCERS – TAX REPORT – TAX RATE

(1) remains the same.

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be ~~83.33~~ 73.33 percent of the rate authorized in 82-11-131, MCA, (3/10 of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after ~~January 1, 2020~~ April 1, 2024.

AUTH: 82-11-111, MCA

IMP: 82-11-123, 82-11-131, MCA

REASON: Under current forecast oil and gas prices and production the proposed rate reduction will provide adequate income for board operations and other activities required by statute. The proposed rule change has no impact to producers but will provide 0.08% of the market value of oil and gas produced and sold to be passed to the oil and gas natural resource distribution account.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Ben Jones, Board of Oil and Gas

Conservation, Billings, Montana, 59102; telephone (406) 656-0040; fax (406) 652-5305; or e-mail mtogpub@mt.gov and must be received no later than 5:00 p.m. on November 17, 2023.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Ben Jones at the above address no later than 5:00 p.m. on November 17, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either ten percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 20 persons based on the number of oil and gas producers in the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 2 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Steve Durrett
Steve Durrett, Chair
Board of Oil and Gas Conservation

/s/ Amanda Kaster
Amanda Kaster, Director
Department of Natural Resources
and Conservation

/s/ Liz Leman
Liz Leman
Rule Reviewer

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.27.902, 37.88.101, and) PROPOSED AMENDMENT
37.89.201 pertaining to Chemical)
Dependency Programs and Medicaid)
Mental Health Services)

TO: All Concerned Persons

1. On November 9, 2023, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84246566055?pwd=RTZNeVZXTzBxSFBYk5ZUFJhdXhRQT09>, meeting ID: 842 4656 6055, and password: 942155; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 842 4656 6055, and password: 942155. Find your local number: <https://mt-gov.zoom.us/u/kbTmnSvJTe>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 26, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yugas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 4, 2022~~ July 1, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at:

<https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual> <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) In addition to the requirements contained in rule, the department has developed and published the BHDD Division Non-Medicaid Services Provider Manual for Substance Use Disorder, dated ~~October 1, 2022~~ July 1, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena MT 59620-2905 or at: <https://dphhs.mt.gov/amdd/AMDDNonMedicaidServicesProviderManual> <https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA

IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ July 1, 2023, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: <https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual> <https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual>.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.89.201 NON-MEDICAID MENTAL HEALTH SERVICES FOR ADULTS: REQUIREMENTS (1) In addition to requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities Division Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~October 1, 2022~~ July 1, 2023, which provides information and policies pertaining to state-funded behavioral health services and substance use disorder services and implements requirements for utilization management and services. The department adopts and incorporates by reference the manual as part of this rule. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at

<https://dphhs.mt.gov/amdd/AMDDMedicaidServicesProviderManual>
<https://dphhs.mt.gov/bhdd/BHDDNonMedicaidServicesProviderManual>.

AUTH: 53-2-201, 53-21-1405, MCA

IMP: 53-21-1401, 53-21-1402, 53-21-1403, 53-21-1404, 53-21-1405, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.27.902, 37.88.101, and 37.89.201.

This rulemaking notice is part of the department's Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative. The HEART Initiative will establish a comprehensive continuum of care to address Montana's behavioral health needs, which includes services for mental health and substance use disorder treatment. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans.

In this proposed rulemaking notice, the department proposes to adopt updated versions of the Behavioral Health and Developmental Disabilities (BHDD) Medicaid and non-Medicaid manuals to effectuate these changes. This change will allow BHDD to expand the behavioral health continuum of care and ensure consistency in the delivery of crisis services in both Medicaid and Non-Medicaid programs. BHDD proposes amending the manuals to add policies for Mobile Crisis Response Services and Mobile Crisis Care Coordination to better align with the Crisis Now model.

The proposed updated manuals, with proposed additions underlined and proposed deletions struck through, are posted on the department's web site at <https://dphhs.mt.gov/bhdd/>. The department proposes that the effective date for the updated manuals will be July 1, 2023. Each of the rules proposed to be amended refers to the Medicaid or non-Medicaid manual, and the rules must be amended to reflect the updated version and date of the manual.

The following policies are being adopted or amended to better align with SAMHSA's Crisis Now model:

Policy 001NM, Purpose, would be amended to include the current link to the BHDD Medicaid Manual, add Mobile Crisis Response Services and Mobile Crisis Care Coordination as allowable Non-Medicaid Mental Health Crisis Services for individuals between 139 and 150% of federal poverty guidelines, and update language for clarity to address stakeholder questions and comments.

Policy 215NM, Case Consultation, would be amended to update the division name.

Policy 230, Integrated Service Delivery and Explanation of Concurrent Service, would be amended to account for the addition of policy 452 Mobile Crisis Response Services and policy 454 Mobile Crisis Care Coordination.

Policy 305NM, Individual Specialized Services: Goal 189, would be amended to update the division name, correct typographical errors, and update terminology from "MMIS system" for clarity to address stakeholder questions and comments.

Policy 452, Mobile Crisis Response Services (MCRS), would be adopted as a new service. MCRS is a tiered model that includes three models: 1. The American Rescue Plan Act (ARPA) Mobile Crisis Team Services, which requires 24/7 coverage of a two-person responding team made up of one clinical mental health professional and one paraprofessional; 2. Mobile Crisis Team Services, which requires 10/7 coverage of a two-person responding team made up of one clinical mental health professional and one paraprofessional; and 3. Mobile Crisis Services, which requires 10/7 coverage of a one-person response by a clinical mental health professional. All models must arrange for the availability of referral to outpatient care and Mobile Crisis Care Coordination.

Policy 454, Mobile Crisis Care Coordination (MCCC), would be adopted as a new service. MCCC provides deliberate organization of member care activities to members within 72 hours of the initial utilization of Mobile Crisis Response Services.

Fiscal Impact

The proposed rule amendments have no fiscal impact. Any fiscal impact would be included with Notice No. 37-1037 that is also proposed to be implemented effective as of July 1, 2023.

5. The department intends these rule amendments to be retroactively effective July 1, 2023. The retroactive effective date will not negatively affect any person or provider.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PUBLIC HEARING ON
RULES I through XCVI and the	)	PROPOSED ADOPTION AND
repeal of ARM Title 37, chapter 95	)	REPEAL
pertaining to licensure of day care	)	
facilities	)	

TO: All Concerned Persons

1. On November 13, 2023, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85792227402?pwd=L2xzMVI6bmZuOGZnd1VjWU9YenJzUT09>, meeting ID: 857 9222 7402, and password: 151321; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 857 9222 7402, and password: 151321. Find your local number: <https://mt-gov.zoom.us/u/kvdDc8V2E>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 30, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I GENERAL DEFINITIONS (1) "Applicant" means an individual or legal entity who has made a formal request for a child care license or registration.

(2) "Capacity" means the maximum number of children a facility is authorized by the department to have in care at any given time.

(3) "Child" is defined in 52-2-703, MCA, and means:

(a) a person under 13 years old; or

(b) a person with special needs, as defined by the department, who is under 18 years old or is 18 years old and a full-time student expected to complete an educational program by 19 years old.

(4) "Child care" has the same meaning as "day care," as defined in 52-2-703, MCA, and means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for

daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. The term does not include:

- (a) school-age care, unless the provider opts to be licensed or registered;
 - (b) informal short term, drop-in care for children provided on an unscheduled or on-demand basis while parents attend discrete activities such as meetings, appointments, or leisure activities, unless the provider opts to be licensed or registered;
 - (c) recreational, creative, educational, or religious programs and camps operating at specific and limited times of the year;
 - (d) programs established chiefly for educational purposes that limit their services to children who are three years old or older, unless the provider opts to be licensed or registered;
 - (e) relative care, unless they opt to be registered; or
 - (f) Family, Friend, and Neighbor care, unless they opt to be registered.
- (5) "Child care center" has the same meaning as "day-care center" as defined in 52-2-703, MCA, and means an out-of-home place in which child care is provided to 16 or more children on a regular basis. The term does not include a place where child care is provided if a parent of a child for whom child care is provided remains on the premises, unless the parent is a director/owner, staff member, support staff, or volunteer of the child care center, or unless the child care center is on the premises or campus of an employer who employs the parent.
- (6) "Child care facility" has the same meaning as "day-care facility" as defined in 52-2-703, MCA.
- (7) "Child Care Licensing (CCL)" is the program at the Montana Department of Public Health and Human Services that regulates and supports child care providers.
- (8) "Continuous" means without interruptions, gaps, or stopping.
- (9) "Department" means the Montana Department of Public Health and Human Services.
- (10) "Discrimination" means unjust or prejudicial treatment in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, marital status, age, or physical or mental disability.
- (11) "Drop-in child care" means a child care facility which only provides care to children on an unscheduled or on-demand basis while parents/guardians attend discrete activities.
- (12) "Family child care facility" or "family day care home" is defined in 52-2-703, MCA, and means a private residence or other structure in which child care is provided to three to eight children on a regular basis. A person who provides child care in a private residence for six or fewer children may opt to be registered as a family child care facility if that person desires to receive child care subsidy payments as described in 52-2-713, MCA.
- (13) "Family, Friend, and Neighbor (FFN)" means a child care provider who can provide care for no more than six children from separate families or all children from a "sibling group" and who opts to be registered.
- (14) "Group child care facility" or "group day-care home" is defined in 52-2-703, MCA, and means a private residence or other structure in which child care is provided to nine to 15 children on a regular basis.

(15) "Group size" means the number of children in a defined space or intentionally grouped around an activity.

(16) "Harm to children" means harm to a child's health, safety, or welfare that falls within the definitions of child abuse or neglect in 41-3-102, MCA.

(17) "Infant" means a child through 11 months old.

(18) "Irregular" means periods of time less than six hours a day or for no more than three consecutive weeks at a time.

(19) "Lapsed registration/license" means:

(a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date;

(b) an application which is incomplete and results in a break-in-license span; or

(c) any break in the registration/license span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.

(20) "License" is defined in 52-2-703, MCA, and is required for child care centers and is optional for school-age care and drop-in child care facilities. License statuses include:

(a) "Probationary license" means a child care license with a status that has been reduced for a specified period of time based on a licensing violation and which will be reinstated to regular status upon successful completion of, and compliance with, remedial measures identified by the department to address specific deficiencies.

(b) "Provisional license" means a license status that is given to a child care provider if the provider does not meet all the requirements, but is attempting to comply. This status can be granted for a period of up to three months, and may be renewed. This license status is used for current licensees who are renewing and for new providers after their pre-licensing inspection.

(c) "Regular license" means a license status that is given upon determination that the child care provider is meeting all requirements set forth for that specific type of licensed child care.

(d) "Revocation" or "revoked license" means an enforcement action by the department to close a child care facility and permanently remove the license.

(e) "Suspended license" means an enforcement action by the department to put a license on hold to protect the health, safety, or welfare of enrolled children or the public.

(21) "Licensee," "owner," or "registered provider" means the legally responsible person or organization who holds a license or registration from the department.

(22) "Negative action" means denial, suspension, revocation, or modification of a license or registration.

(23) "Night care" or "non-traditional hours" means care provided for a child between the hours of 6 p.m. and 6 a.m.

(24) "Overlap care" means care provided at a registered family or group child care facility for children three years and older, and approved by the department for a designated time period not to exceed three hours when the number of children in care may exceed the number of children on the registration.

(25) "Parent" or "guardian" means birth parent, custodial parent, adoptive parent, foster parent, legal guardian, or an individual authorized to act with respect to a child by the parent or entity legally responsible for the welfare of the child.

(26) "Pre-inspection" means a child care licensing or registration inspection before a child care provider begins providing care. The pre-inspection ensures the applicant has the required components in place to be a licensed or registered child care facility, excluding FFNs and Relative Care Exempt providers.

(27) "Premises" means the private residence, facility, or other structure in which licensed or registered child care will be provided and the associated approved outdoor space.

(28) "Provider" means the applicant, the license holder, or registration holder.

(29) "Registration" is defined in 52-2-703, MCA, and is required for group child care facilities and family child care facilities. "Registration" also means department approval of a Relative Care Exempt provider or FFN provider who opts to be registered. Registration statuses include:

(a) "Probationary registration" means a child care registration that has been reduced for a specified period of time based on a registration violation and which will be reinstated to regular status upon successful completion of, and compliance with, remedial measures identified by the department to address specific deficiencies.

(b) "Provisional registration" means a registration status that is given to a family or group child care provider if the provider does not meet all the requirements, but is attempting to comply. This status can be granted for a period of up to three months, and may be renewed. This registration status is used for current registration holders who are renewing and for new providers after their pre-registration inspection. This status does not apply with respect to FFN or RCE (Relative Care Exempt) providers.

(c) "Regular registration" means a registration status that is given upon determination that a registered provider is meeting all requirements set forth for that specific type of registered child care.

(d) "Revocation" or "revoked registration" means an enforcement action by the department to close a child care facility and permanently remove the registration.

(e) "Suspended registration" means an enforcement action by the department to put a registration on hold to protect the health, safety, or welfare of enrolled children or the public.

(30) "Regular basis" is defined in 52-2-703, MCA, and means providing child care to children of separate families for any daily periods of less than 24 hours and for three or more consecutive weeks at a time.

(31) "Relative care" means the child is the brother, sister, nephew, niece, grandchild, or great grandchild of the persons providing child care and includes a child in a step, foster, or adoptive relationship.

(32) "Relative care exempt (RCE) provider" means a person providing relative care who opts to be registered by the department to receive payments to provide child care.

(33) "Renewal" is a process for providers to demonstrate ongoing compliance with licensing or registration requirements and for the department to reissue a license or registration to continue operating a child care facility.

(34) "School-age care" means regularly scheduled care exclusively for school-age children during out-of-school-time hours, licensed by the department.

(35) "School-age child" means a child who is five years old or older.

(36) "Sibling group" means all children are from the same household.

(37) "Staff" refers to all persons who work or substitute in a child care facility, including directors, and count in child-to-staff ratio.

(38) "Supervision" means the provider and/or such staff as are necessary to maintain required child-to-staff ratios must be able to see or hear the children at all times.

(39) "Support staff" means a staff member of a child care provider who does not participate in a caregiving role and is not counted in child-to-staff ratios. Examples of support staff are cooks, administrative staff, or cleaning staff.

(40) "Technical assistance" means education, training, coaching, and other support provided by the department, its partners, or its contractors to child care providers and staff to assist in meeting licensing and registration requirements and enhancing quality of care.

(41) "Toddler" means a child who is 12 months old through 36 months old.

(42) "Waiver" means the department has approved an exception to a rule within this chapter.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE II TYPES OF LICENSES AND REGISTRATION (1) Montana has different types of child care licenses and registrations, which vary by the number of children in care, the care settings or facility type, and sometimes the ages of children in care. Providers have a choice in selecting their license or registration category based on the benefits and requirements associated with each type of care.

(a) Child care can be provided in child care centers, group child care facilities, family child care facilities, school-age care facilities, drop-in child care facilities, FFN providers, and RCE providers.

(b) Each rule in this child care licensing chapter describes the types of child care to which it applies.

(i) When the rule refers to "all licensed child care facilities," that includes child care centers, school-age care facilities if they choose to be licensed, and drop-in child care facilities if they choose to be licensed.

(ii) When the rule refers to "all licensed and registered child care facilities," that means licensed child care centers, licensed school-age care facilities, licensed drop-in care facilities, registered group child care providers, registered family child care providers, and registered FFN providers.

(iii) RCEs are only included when specifically referenced in the rule.

(2) Child care types are determined based on the following criteria:

(a) RCE providers provide care in a private residence either for a sibling group of any size or for no more than two children from separate households.

(b) FFN providers provide care in a private residence either for a sibling group of any size or for no more than six children from separate households.

(c) Family child care facilities provide care in a private residence or other structure for three to eight children on a regular basis.

(d) Group child care facilities provide care in a private residence or other structure for nine to 15 children on a regular basis.

(e) Child care centers provide care in an out-of-home setting for 16 or more children on a regular basis.

(f) School-age care facilities provide care on a regular basis only to school-age children and during out-of-school-time hours.

(g) Drop-in child care facilities provide care for children in an out-of-home setting on an unscheduled or on-demand basis while parents attend discrete activities, like meetings, appointments, or leisure activities.

(3) Any provider serving seven or more children on a regular basis must be licensed or registered.

(a) Child care centers must be licensed.

(i) Drop-in child care facilities and school-age care facilities have the option of being licensed.

(b) Group child care facilities serving nine to 15 children and family child care facilities serving seven or eight children must be registered.

(i) Providers serving three to six children have the option of registering as a family child care provider or as an FFN provider. Registration is required for providers who receive or wish to receive subsidy payments.

(ii) RCE and FFN providers have the option of being registered.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE III. DETERMINING FACILITY TYPE AND COUNTING

CHILDREN ON LICENSE OR REGISTRATION (1) The facility type is determined by:

(a) the provider's application;

(b) the license or registration capacity for the facility;

(c) the space designated for the facility;

(d) the number of staff members available to meet the child-to-staff ratio requirements; and

(e) whether any other safety, health, or program requirements are affected or violated.

(2) Children of staff or owners who are present in the child care space during child care hours are included when counting children for license or registration type and capacity.

(a) Children of owners who attend school full time will not be included when counting children.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-731, MCA

NEW RULE IV CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION (1) A licensed or registered child care facility may not provide care for more than the number of children permitted by its license or registration at any one time.

(2) Child care centers and licensed drop-in child care facilities must meet the following requirements:

(a) The child-to-staff ratio and maximum group size are:

(i) 4:1 for children newborn through 11 months old with a maximum group size of 12;

(ii) 6:1 for children 12 months through 23 months with a maximum group size of 12;

(iii) 8:1 for children two years old with a maximum group size of 16;

(iv) 10:1 for children three years through five years old with a maximum group size of 20; and

(v) 20:1 for children six years old and over with a maximum group size of 40.

(b) When children of different ages are mixed, the child-to-staff ratio and group size for the youngest child in the group must be maintained.

(c) Only the director, site directors, lead teachers, teachers, substitutes, and trainees may be counted as staff when determining the child-to-staff ratio.

(d) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.

(3) At nap time in licensed child care centers, the child-to-staff ratio may be doubled for children two years and over when the following conditions are met:

(a) at least half the children are sleeping;

(b) another staff member is onsite in the center and is immediately available;

(c) the maximum group size and room capacity are not exceeded; and

(d) the staff member responsible for direct supervision of the napping children is not a trainee.

(4) Licensed school-age care providers must have a maximum child-to-staff ratio of 20:1 for children five years old and over with a maximum group size of 40.

(a) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.

(b) School-age care providers may exceed the group size limitation during transportation.

(5) Family and group child care facilities must meet the following staffing requirements:

(a) Family and group child care facilities serving mixed age groups may use an 8:1 child-to-staff ratio, with no more than three children under two years old.

(i) Any time there are more than three children under two years old in a program serving mixed age groups, there must be at least two staff members present with the group of children.

(b) Family and group child care facilities serving solely children under two years old must use a 4:1 child-to-staff ratio.

(c) There must be sufficient staff so that an adult is always present and supervising all children.

(6) Overlap care may be approved by the department for family child care and group child care facilities in situations, such as before and after school, when

the number of children in care over three years old exceeds the licensed capacity for a short period of time. Overlap care must meet the following requirements:

- (a) Overlap care for children under three years old is not permitted.
- (b) Overlap care must not exceed three hours total in any day.
- (c) Group child care facilities may care for up to four additional children during the approved overlap time.
- (d) Family child care facilities may care for up to two additional children during the approved overlap time.
- (e) Child care facilities providing two shifts of 12-hour care may be granted three hours of overlap care for each 12 hours of continuous care.
- (f) During approved overlap care times, family and group child care facilities may use a 10:1 child-to-staff ratio.
- (g) Facilities wanting to provide overlap care must submit a written plan to CCL which includes the specific hours in which the overlap will occur, proof of insurance to care for the total number of children, and documentation of square footage sufficient to care for the total number of children.
- (h) A facility must not provide overlap care until it has received written approval of this plan from CCL.
- (7) Children must be supervised at all times.
- (8) Staff providing direct care must be responsible for protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE V LICENSE OR REGISTRATION APPLICATION (1) Any individual, agency, or group may apply for a license or registration to operate a child care facility. Applications may be obtained from the Department of Public Health and Human Services, Early Childhood and Family Support Division, Child Care Licensing Program, P.O. Box 4210, Helena, MT 59620-4210 or at <https://dphhs.mt.gov/ecfsd/childcare/childcarelicensing>.

(2) Applications for a license or registration by American Indians residing on American Indian reservations must follow the requirements of 52-2-722, MCA.

(3) The department will determine whether or not a license or registration will be issued within 30 days of receipt of the application.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE VI RCE AND FFN APPLICATION REQUIREMENTS (1) RCE and FFN providers must meet the following requirements to be registered under this chapter:

- (a) be 18 years old or older;
- (b) limit the care they provide to a period of less than 24 consecutive hours;

- (c) have satisfactory results of background checks for the applicant as set forth in [NEW RULE LXXXI]. If care is provided in the applicant's home, all adults who reside there must also have satisfactory results of background checks;
 - (d) complete orientation approved by the department that includes health and safety training; and
 - (e) complete a department-approved health and safety review course at least every three years.
- (2) In addition to the requirements in (1), FFN providers must hold current certification for infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting.
- (3) For payment purposes, subsidized care provided in a child's home can only be paid to FFN and RCE providers, pursuant to ARM 37.80.208.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

- NEW RULE VII ISSUING A LICENSE OR REGISTRATION (1) The department must conduct a pre-inspection with all child care center, school-age care, drop-in child care, group child care, and family child care license or registration applicants before the applicant can care for children.
- (a) FFN and RCE providers are not subject to pre-inspection requirements.
 - (2) The department will issue a 90-day provisional license or registration following successful pre-inspection. The facility can begin caring for children under the provisional license or registration.
 - (3) The department will observe the facility during the provisional license or registration period while children are in care to assess compliance with requirements before removing the provisional status.
 - (4) The department will issue a regular license or registration after the observation and completion of any required compliance measures. The department issues regular licenses and registrations for a period of one year.
 - (5) The department will recognize the status of, and will not require a state license or registration for, a facility that is licensed as a child care facility by a branch of the United States armed forces, including the United States Coast Guard.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

- NEW RULE VIII RENEWING A LICENSE OR REGISTRATION (1) A child care provider must submit an application for renewal at least 60 days prior to expiration of the license or registration.
- (2) Provided a complete renewal application is filed timely, the expiring license or registration will remain in effect until the department makes a determination on the renewal application.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE IX LICENSE OR REGISTRATION APPLICATION DENIAL

- (1) A child care license or registration application must be denied if:
- (a) the application process has exceeded 90 days from the date the application is received because the applicant has not submitted all required materials to the department;
 - (b) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, age, marital status, mental or physical disability, or national origin of the parent/guardian or the child; or
 - (c) background check results include offenses on the part of the applicant, any adult residing in the child care facility, or other adult who regularly or frequently stays in the facility.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

NEW RULE X TECHNICAL ASSISTANCE (1) The department provides the following licensing and registration support:

- (a) assistance to current and prospective providers to understand and meet licensing and registration requirements;
- (b) consultation with child care providers on enrichment experiences for children, proper environment, and nutrition; and
- (c) referral services and technical assistance to child care providers for staff training and development. Technical assistance may be concurrent with other department actions.

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-733, MCA

NEW RULE XI LICENSE OR REGISTRATION ASSIGNMENT (1) A license or registration is valid only for the licensee or registered provider and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.

(2) Separate licenses or registrations are required for child care facilities maintained on separate premises, even when operated by the same provider.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-723, 52-2-731, MCA

NEW RULE XII FACILITIES INSPECTIONS (1) The department may inspect the conditions and qualifications of licensed or registered child care facilities or applicants during child care business hours.

- (a) The department may conduct unannounced inspections of licensed or registered child care facilities.
- (b) The department must schedule inspections for FFN providers.
- (2) The department is responsible for inspecting child care facilities in addition to those inspections required by the local health authority and/or local or state fire marshal inspections.

(3) The department must visit and inspect all licensed and registered child care facilities annually, except RCE providers.

(4) RCE providers and RCE applicants are not subject to any annual inspection or pre-inspection requirements.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE XIII REQUIREMENTS FOR FACILITIES OPERATING WITH JOINT PROGRAMS (1) A child care facility operating in connection with another activity unrelated to child care must meet the following requirements:

(a) have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services;

(b) children attending the child care facility must not come in contact with other persons unrelated to child care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety, and well-being of the children in child care; and

(c) if multiple programs, including multiple child care facilities in the same commercial building, increase the number of people regularly in the building to 16 or more children, the child care facility must comply with all fire, safety, and sanitation requirements for licensed child care facilities.

(2) Persons or organizations may be licensed or registered for more than one child care facility.

(a) If the child care facility is located in a private single-family living structure, the department will issue only one registration or license for child care in the structure and premises.

(b) If more than one child care facility exists in one retail or commercial structure, the department will grant individual licenses to each facility.

(c) Multi-family structures, such as an apartment building or duplex, may house multiple child care facilities so long as each is individually licensed or registered and meets the requirements of (1)(a) and (b).

(3) A provider may be licensed or registered to provide care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

(a) If the facility is licensed or registered as a child care facility and serves as a foster care home, the department's Child and Family Services Division (CFSD) and Early Childhood and Family Support Division (ECFSD) must both approve the dual license or registration.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

NEW RULE XIV WAIVERS AND PILOT PROJECTS (1) New and renewal license or registration applications may include written requests to waive any provision of a rule within the child care licensing chapter. The department and its

partner agencies (e.g., local public health departments) may grant waivers if the department determines that the health and safety of the children in care are not diminished. The written request must:

(a) include the basis for request, such as significant hardship to provider or facility;

(b) propose an alternative that is consistent with best practices in early childhood or school-age care; and

(c) demonstrate that the alternative will meet the intent of the rule.

(2) Proposals for innovative pilot projects will be considered by the department upon written request. The department may grant an extended provisional license or registration for approved projects that meet all criteria for provisional license or registration status. Projects must not be implemented without prior written approval from the department. The department reserves the right to revoke such extended provisional licenses or registrations.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE XV PROGRAMMING DEFINITIONS (1) "Guidance approach" means the use of direction to resolve mistaken behavior without punishment.

(2) "Positive child guidance" means age-appropriate, non-punitive methods used to redirect a child to achieve a desired behavior.

(3) "Programming" means the activities, schedules, and curriculum of a child care facility.

(4) "Punishment" means any form of discipline that causes pain, discomfort, humiliation, shame, or fear, including name-calling, spanking, slapping, pinching, pulling, and hitting with an object.

(5) "Screen time" means time during which content on a mobile phone, tablet, computer, television, or other device can be viewed.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XVI GENERAL PROGRAMMING REQUIREMENTS (1) Child care centers, group child care facilities, family child care facilities, and licensed drop-in child care facilities must have a written plan of daily activities and routines.

Programming must:

(a) be flexible to accommodate the ages and needs of individual children and the group. Both active and passive learning experiences, and outdoor play each day except when precluded by weather, must be provided under direct supervision;

(b) ensure facilities provide durable, safe, clean, and child-sized furniture or furniture adapted for children's use; and

(c) limit screen time.

(2) Child care centers, group child care providers, family child care providers, and licensed drop-in child care providers offering night care must meet the following criteria in addition to compliance with other requirements:

(a) develop plans for staff, equipment, and space which will provide for the personal safety and emotional and physical care of children away from their families at night.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

NEW RULE XVII INFANT AND TODDLER ACTIVITIES (1) Child care centers, group child care facilities, family child care facilities, and licensed drop-in child care facilities that provide care for children under 36 months old must have a written plan of daily activities and routines that ensures:

(a) a child who is awake must not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, highchair, or other apparatus; and

(b) each infant can maintain the infant's own pattern of sleeping and waking periods according to instructions from the parents/guardians.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

NEW RULE XVIII POSITIVE CHILD GUIDANCE (1) All staff of licensed and registered child care facilities must use guidance approaches appropriate to the child's age and developmental level to help children resolve conflicts, manage transitions, engage in challenging situations, or express feelings, needs, and wants.

(a) Positive child guidance should include forming positive adult-child relationships, clear direction, showing positive alternatives, redirection, and setting expectations and clear limits that foster the child's ability to self-regulate.

(b) All staff must model appropriate behaviors for children.

(2) All child care staff are prohibited from using abusive or physical punishment, including:

(a) spanking or other forms of physical punishment;

(b) shaking an infant or child of any age;

(c) any punishment or discipline that is humiliating, shaming, frightening, or otherwise damaging to the child or their family; or

(d) punishment for any toilet training issue.

(3) Parental or guardian permission does not allow for the use of any physical punishments or other approaches to discipline listed in (2).

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-2-211, 53-2-212, 53-4-611, MCA

NEW RULE XIX ADMINISTRATIVE DEFINITIONS (1) "Abusive head trauma" means a preventable and severe form of physical child abuse that results in an injury to the brain of a child caused by violent shaking and/or blunt impact.

(2) "Expulsion" or "expel" means terminating the enrollment of a child.

(3) "Shaken baby syndrome" is a preventable, severe form of physical child abuse resulting from violently shaking an infant by the shoulders, arms, or legs, and which may result from both shaking alone or from shaking with impact.

(4) "Suspension" means reducing the amount of time a child may be in attendance, either by requiring the child to stop attending for a particular period of time or reducing the number of days or hours a child may attend. Requiring a child to attend the facility in a special place away from the other children in the regular group setting is included in this definition.

(5) "Volunteer" means any person who is not compensated with employment pay or benefits.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XX EMERGENCY COMMUNICATION (1) Each licensed or registered child care facility must have:

- (a) a working telephone;
- (b) telephone numbers of emergency services and the Emergency Montana Poison Control Center (800) 222-1222 posted where they are visible to staff; and
- (c) emergency contact information for each child easily accessible to staff in a location that maintains privacy for families.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-734, 52-2-735, MCA

NEW RULE XXI POLICY REQUIREMENTS (1) All licensed child care providers and registered group or family child care providers must adopt and follow written policies for first aid consistent with recommendations from Caring for Our Children: National Health and Safety Performance Standards, Guidelines for Early Care and Education Programs. These must include:

- (a) procedures for handling medical emergencies;
- (b) a plan for preventing and responding to emergencies due to food and allergic reactions;
- (c) a plan for providing cardiopulmonary resuscitation (CPR) in a timely manner;
- (d) directions to complete an incident or injury report:
 - (i) if the incident requires only onsite first aid, a copy of the report must be provided to the parents/guardians of the children involved, and a copy retained on file at the child care facility.
 - (ii) if the incident requires emergency services, hospitalization, or medical treatment, a copy of the report must be provided to the parents/guardians of the children involved, and a copy retained on file at the child care facility. The provider must inform also CCL within 24 hours of the incident;
- (e) directions for calling parents/guardians or someone else designated as responsible for the child when a child is sick or injured; and

- (f) a medication administration policy which must include:
 - (i) types of medication which may be administered;
 - (ii) medication administration procedures for each child, including the route of medication administration, the amount of medication given, and the times when medication is to be administered; and
 - (iii) a parent/guardian authorization.
- (2) All licensed child care facilities and registered group or family child care facilities must have a written emergency disaster plan for each structure in which child care is provided. Emergency disaster plans must include:
 - (a) plans for evacuation, including identification of at least one off-site gathering point;
 - (b) plans to address children's individual needs, including mobility and special health care needs;
 - (c) staff responsibilities;
 - (d) plans for communicating with parents/guardians and reunifying children with their parents/guardians;
 - (e) plans to shelter in place and for lock down; and
 - (f) plans for continuity of operations.
- (3) All licensed child care providers and registered group or family child care providers serving children under two years old must develop a written policy that describes the practices used to promote a safe sleep environment. All child care staff must sign an acknowledgment indicating that they read and understand the facility's safe sleeping policy.
- (4) All licensed child care programs and registered group or family child care programs must have a written policy on identifying and preventing shaken baby syndrome and abusive head trauma. The policy must include:
 - (a) how the child care provider will ensure all staff are knowledgeable about and able to recognize the signs and symptoms of shaken baby syndrome and abusive head trauma;
 - (b) procedures for coping with a crying, fussing, or distraught infant or child; and
 - (c) mandatory reporting of suspected child abuse and neglect.
- (5) All licensed child care programs and registered group or family child care programs must have a written expulsion and suspension policy.
- (6) If providing any transportation, the licensed child care provider or registered group or family child care provider must develop a written transportation policy that outlines safe transport practices.
- (7) If providing any opportunity for children to use swimming pools or be near other bodies of water, the licensed child care provider or registered group or family child care provider must develop a written water safety policy that outlines safe supervision practices for children in and around water.
- (8) FFN providers have limited policy documentation requirements. FFNs must provide written health and safety standards to parents/guardians and the department relating to:
 - (a) managing infectious disease;
 - (b) safe sleep practices, if caring for children under two years old;
 - (c) medication administration;

- (d) food and allergy emergencies;
- (e) shaken baby syndrome and abusive head trauma;
- (f) emergency preparedness;
- (g) transportation safety, if applicable;
- (h) expulsion and suspension; and
- (i) mandatory reporting of suspected child abuse and neglect.

(9) If a child care provider obtains a waiver from the department of any rule in this chapter, the program must develop a written alternative plan that includes policies and procedures to maintain compliance.

(10) All policies must be reviewed and updated annually by the program.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-734, 52-2-735, MCA

NEW RULE XXII RECORD RETENTION (1) Licensed and registered child care providers may maintain records in paper or electronic format, with the exception of the state-issued emergency contact and consent form, which needs to be in paper form. The department must be able to easily access such records. Records may be stored on-site or in the facility's administrative office, except the state-issued emergency contact and consent form which must be stored on-site.

(a) The provider must make records available during normal working hours to representatives of the department.

(2) Upon request, parents/guardians must be allowed to inspect the records pertaining to their child.

(3) All records that the department requires the provider to maintain must be kept for three years, unless otherwise provided by law.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-732, MCA

NEW RULE XXIII PROGRAM RECORDS (1) Licensed and registered child care providers must maintain the following records as applicable to the program type:

- (a) All licensed and registered child care providers must maintain:
 - (i) a copy of the current license or registration, inspection reports by department staff, and correction plans for deficiencies;
 - (ii) documentation that any vehicle used for transportation of children while in care is registered and insured in accordance with state law;
 - (iii) results of well-water tests and lead paint tests, as applicable;
 - (iv) documentation that the facility complies with sewer requirements of this chapter;
 - (v) a log of fire extinguisher and smoke detector checks;
 - (vi) a medication administration log if medications are administered at the facility; and
 - (vii) a real-time attendance record of the children in care.

(b) All licensed child care providers and registered group and family child care providers must maintain:

(i) proof of current fire and liability insurance coverage for the provision of child care in the facility;

(ii) a record of each emergency drill conducted;

(iii) a master list of the names, addresses, and phone numbers of all children in care and their parents/guardians;

(iv) for any injury or incident that occurs in the facility, reports which include the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parents/guardians were notified; and

(v) written menu records.

(c) Licensed child care providers must maintain:

(i) an annual inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met; and

(ii) an annual inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities.

(2) If a child care provider obtains a waiver from any rule in this chapter, a copy of the alternate plan and its approval by the department must be on file.

AUTH:52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 52-2-732, MCA

NEW RULE XXIV CHILDREN'S RECORDS (1) All child care staff and volunteers must maintain personal information about a child and the child's family as confidential.

(2) All licensed and registered child care providers must have the following information prior to a child being enrolled in a child care facility. Forms must be signed by the parent or guardian:

(a) Written health information explaining any special medical needs of the child, including allergies, and a health care and medication plan if medication for chronic health conditions is required.

(i) Child care providers administering medications must have necessary medical documentation, including medication authorizations, the name of a health care provider to be contacted in event of an emergency, and the prescription, if required.

(b) Authorization of persons allowed to pick up the child.

(c) An emergency contact and consent form. Once children are enrolled, this form must accompany staff when children are away from the child care site for activities.

(3) All licensed and registered child care providers must maintain the following records related to enrolled children:

(a) the names, addresses, and phone numbers of children and their parents/guardians;

(b) a medication administration log if medications are administered to children at the facility;

- (c) for any injury or incident that occurs in the facility, documentation which includes the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parents/guardians were notified;
 - (d) written parent/guardian permission to swaddle children under three months old, if desired by the parents/guardians;
 - (e) for children 12 to 18 months old who are placed on a cot or mat, a signed statement indicating that the parents/guardians have given permission for their child to be placed on a cot or mat;
 - (f) special dietary instructions written by parents/guardians;
 - (g) written consent from the parents/guardians for any transportation provided; and
 - (h) adequate documentation of immunization status as outlined in [NEW RULE LXVI(2) through (5)].
- (4) Children's records must be reviewed and updated as necessary, but not less frequently than once per year.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-735, 52-2-736, MCA

NEW RULE XXV STAFF RECORDS (1) If a licensed or registered child care provider employs staff, the provider must maintain the following records for each staff member:

- (a) contact information; and
- (b) acknowledgment of, and agreement to follow, program policies for:
 - (i) identifying and preventing shaken baby syndrome and abusive head trauma;
 - (ii) mandatory reporting; and
 - (iii) safe sleep, if the program provides care for children under two years old.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 52-2-732, MCA

NEW RULE XXVI FAMILY ACCESS TO INFORMATION (1) Before a child is enrolled at any licensed child care facility or registered group or family child care facility, the following information must be made available to all parents/guardians:

- (a) a typical daily schedule of activities;
 - (b) admission requirements, enrollment procedures, and hours of operations;
 - (c) frequency and type of meals and snacks served;
 - (d) fees and payment plan;
 - (e) regulations concerning sick children;
 - (f) transportation and trip arrangements, if applicable;
 - (g) positive child guidance policy; and
 - (h) expulsion and suspension policy.
- (2) All child care facilities must post a copy of the facility license or registration and the phone number of state and local Early Childhood and Family Support Division offices in a place where parents/guardians can see them.

Parents/guardians should be encouraged to contact the division if they have questions regarding the license or registration or child care regulations.

(3) All child care facilities must allow custodial parents, non-custodial parents, and legal guardians access to the facility at any time during which child care is provided, unless there is a current court order preventing parent-child contact.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-723, 52-2-731, 52-2-732, 52-2-735, 52-2-736, MCA

NEW RULE XXVII NOTIFICATIONS TO THE DEPARTMENT (1) Within ten days of the change, providers must notify the department of any changes that would affect the terms of the license or registration, including changes in staff, temporary or permanent closures, change in ownership of the program, changes in the category of license or registration based on the number and ages of children in child care, change to the business or mailing address, or changes to the child care property.

(2) All staff and owners of licensed and registered child care facilities are mandatory reporters of suspected child abuse and neglect pursuant to 41-3-201, MCA. Any child care staff member or owner who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter to the department's child abuse hotline at (866) 820-5437. The staff member or owner must make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

(3) All licensed and registered child care providers must report to CCL the following events involving the child care facility, regardless of whether it occurs on or away from the premises within 24 hours:

- (a) a lost or missing child or an incident involving a child being left alone;
- (b) suspected maltreatment of a child;
- (c) suspected sexual, physical, or emotional abuse by staff, other children, family members, or other adults;
- (d) injuries to children requiring medical or dental care;
- (e) illness or injuries requiring hospitalization or emergency treatment;
- (f) mental health emergencies;
- (g) health and safety emergencies involving parents, guardians, and visitors to the program;
- (h) death of a child or staff member, if the death was the result of a serious illness or injury that occurred on the premises of the child care facility, even if the death occurred outside of the child care facility;
- (i) the presence of a threatening individual who attempts or succeeds in gaining entrance to the child care facility;
- (j) fire involving the fire department; and
- (k) any environmental danger or other hazard at the facility that the provider is aware of that could affect the health, welfare, or safety of children in care.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE XXVIII SAFETY AND FACILITIES DEFINITIONS (1) "Bodies of water" means rivers, streams, ponds, ditches, fountains, and other water sources into which a child can step.

(2) "Crib" means a bed that is designed to provide a sleeping environment for children under two years old that meets U.S. Consumer Product Safety Commission requirements.

(3) "Exit" means the point (door or window) that allows people inside the facility to leave and move to the outside of the facility.

(4) "Firm sleep surface" means a crib mattress or a cradleboard.

(5) "Means of egress" means a continuous and unobstructed path from any point inside a facility to a safe place outside of the facility.

(6) "Portable wading pool" means a structure which contains water, is used for aquatic activities, and is less than 24 inches high.

(7) "Remote means of egress" means two exits whose distance apart is equal to or greater than one-half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.

(8) "Safe sleep environment" means an environment where a child under 12 months old is placed on a firm sleep surface with no incline and no items in the sleeping environment other than a pacifier, and a child 12 months old or older is placed on a firm sleep surface or on a cot or mat. A safe sleep environment does not include waterbeds, water mattresses, gel pads, or sheepskin covers.

(9) "Sauna" means a small room or structure used for hot-air or steam baths.

(10) "Spa" means a hot tub or similar large tub of hot water.

(11) "Transportation" means any time a child is transported in a motor vehicle.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XXIX HAZARDS (1) All licensed and registered child care providers are responsible for keeping hazardous materials and objects inaccessible to children in care, including personal property of staff and licensee.

(2) Cleaning materials, flammable liquids, aerosol cans, and other toxic materials must be kept in their original containers and in a place inaccessible to children. They must not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children when used.

(3) Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

(4) The building and grounds used by children must be maintained to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are easily cleanable and reasonably clean;

(c) the building and grounds are reasonably free of insects, rodents, and other vermin;

- (d) the building and grounds are reasonably neat and free from the accumulation of dirt, rubbish, or other health and safety hazards;
- (e) all rooms must be dry, well ventilated, and well lit; and
- (f) the children attending the facility must not be exposed to paint containing lead in excess of .0009%.

(5) During business hours, any guns stored on the premises of a child care facility must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.

(6) Electrical outlets must be tamper-resistant or covered in areas occupied by children under five years old, and exposed light sockets must be suitably protected to prevent electrocution.

(7) Toys, play equipment, and any other equipment used by the children must be sturdy and free from rough edges, sharp corners, splinters, and must be kept in good repair.

(8) Choking hazards must not be accessible to children who are still placing objects in their mouths, including:

- (a) toys and objects with a diameter of less than one inch (2.5 centimeters) and objects with removable parts that have a diameter of less than one inch (2.5 centimeters);

- (b) plastic bags;

- (c) Styrofoam objects; and

- (d) balloons.

(9) Full-size trampolines, ball pits, and other inflatable play structures are prohibited for use by children in care and, if they exist on the premises, must be inaccessible to children in care.

- (a) Mini trampolines are permitted when used according to manufacturer's specifications, by one child at a time, and with supervision.

(10) Bathtubs, buckets, water tables for play, and other water receptacles must be emptied immediately after use.

(11) Guardrails, gates, or protective barriers must be installed along open-sided walking surfaces including stairs, ramps, and landings, where there is more than a 36-inch vertical distance to fall.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXX ANIMALS (1) Any pet or domesticated animal present at any licensed or registered child care facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and either pose no safety threat to children or adults, or be kept separate from children, families, and staff.

(2) Staff must closely supervise all interactions between children and animals and instruct children on safe behavior when near animals.

- (3) The program is responsible for:

- (a) maintaining the animal's vaccinations and vaccination records; and

- (b) making vaccination records available to the department upon request.

(4) The child care provider must make reasonable efforts to keep stray animals off the premises.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXI BUILDING REQUIREMENTS RELATED TO EXITS (1) In an emergency, all occupants must be able to escape from a child care facility in a safe and timely manner.

(a) Doorways, aisle ways, corridors, and stairs must be clear of any obstruction.

(i) Gates or guards at the top and bottom of stairways are allowed if they have latching devices that are easily opened by adults in case of emergency.

(ii) Sleeping equipment must be arranged to permit easy access to every child and unobstructed means of egress.

(2) All facilities must have two exits that create remote means of egress on each level that is used for child care.

(a) All nap rooms must have at least two means of egress.

(b) Exits/means of egress must meet the following requirements:

(i) one exit must be a door that is at least 32 inches wide and 80-inches tall; and

(ii) the second exit may be a window that provides a clear opening of at least 20 inches in width or 24 inches in height and 5.7 square feet in area. The bottom of the exit must not be more than 44 inches above the floor.

(3) Exit doors, windows, and their opening hardware must be maintained in good repair.

(4) If a child care provider chooses to lock exterior facility doors to prevent unauthorized access to the facility or to prevent a child from escaping, the lock:

(a) may not prevent free escape from the interior;

(b) must be easily opened with one motion from the inside of the facility; and

(c) may not prohibit access by parents/guardians. A facility may not use locking devices to prevent unannounced access by authorized individuals, including parents/guardians. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized persons with information about how to gain access.

(5) Children must be able to open every closet door from the inside without a key, a tool, or special knowledge or effort.

(6) Every bathroom door must be designed to permit opening of the locked door from the outside in an emergency. The opening device must be readily accessible.

(7) This rule applies to all licensed and registered child care facilities except RCE facilities.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXII INDOOR SPACE REQUIREMENTS (1) All licensed and registered child care providers, except RCE providers, must ensure there is at least 35 square feet of usable floor space per child who will be in a room at any one time. A provider may request a waiver from this rule with an alternate plan, such as when limited indoor space is offset by sheltered outdoor space.

(2) Calculation of the required minimum 35 square feet of space per child must exclude food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, shelving, and other storage spaces.

(3) When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child must be provided except for:

- (a) when large group activities, such as educational assemblies, occur; and
- (b) periods when children are using their rest equipment.

(4) During sleep periods, the area must be sufficient to provide spacing between the children using sleep equipment.

(5) The equipment and furniture arrangement must permit unobstructed floor area sufficient to allow play appropriate for each group of children in care.

(6) In licensed child care facilities that include infants and toddlers, play areas for infants must be separate from play areas used by children over two years old, or not be used for any children over two years old while being used for children under two years old. Sleeping areas must be separate from play areas.

(7) A licensed child care facility must have space, furniture, and equipment to provide for support functions, such as storage, food preparation, custodial services, laundry, and administrative office functions.

(8) Facilities that use shared spaces should care for children in the licensed/registered, dedicated space most of the time.

(9) Family and group child care providers must not use third stories in private homes for child care purposes; such stories must be barricaded or locked to prevent entry by children. The use of second or higher stories in commercial or apartment buildings is subject to fire and building code requirements.

AUTH: 52-2-704, , MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE XXXIII OUTDOOR SPACE REQUIREMENTS (1) Outdoor play space must contain a minimum of 75 square feet of usable space per child accessing the play space at any given time. A provider may request a waiver from this rule if a facility does not have enough outdoor play space to accommodate all enrolled children at one time with an alternate plan such as:

- (a) offsetting limited outdoor space with indoor space not included in indoor space calculations, such as a gym, permitting an equivalent activity program; or
- (b) offsetting limited outdoor or unfenced space with the availability or use of a nearby school playground, parks, or other safe outdoor play areas.

(2) Outdoor play areas at all child care facilities must be surrounded by a fence or natural barrier that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter.

(a) If a provider submits an alternative plan for outdoor space that includes space not completely surrounded by a fence, the provider must include, in the plan, details about supervision to maintain safety.

(3) Any outdoor play area must be maintained free from health and safety hazards.

(4) Provisions must be made for both sunny and shady activity areas.

(5) Outdoor areas must be designed or monitored so that all parts are always visible, allowing for direct supervision by child care staff.

(6) All licensed and registered child care providers except RCE providers must anchor outdoor equipment, such as a climbing apparatus, slides, and swings, firmly, and place in a safe location according to manufacturer's specifications.

(7) All licensed child care providers must maintain ground cover under outdoor equipment, which must be a shock-absorbing surface as defined by the U.S. Consumer Product Safety Commission, or with a minimum of six inches of sand, fine gravel, or woodchips.

(a) School-age care facilities operating on school premises or utilizing other inspected outdoor space must follow the outdoor equipment requirements of the premises and are not subject to additional licensing requirements.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-734, 52-2-735, 52-2-736, MCA

NEW RULE XXXIV FIRE SAFETY REQUIREMENTS (1) Licensed child care facilities must meet International Fire Code requirements to open and operate as a child care facility. New child care center, school-age care, or drop-in care providers should consult with their local jurisdiction or state fire marshal before selecting a facility.

(2) Licensed child care providers must provide CCL an annual inspection report from the state or local jurisdiction fire marshal indicating the fire safety rules have been met.

(a) Providers using a commercial or public space that receive an annual fire safety inspection, such as a school, do not need a separate inspection. The child care provider is responsible for providing a copy of the inspection reports to CCL.

(3) Group child care, family child care, and FFN providers must meet fire safety requirements by:

(a) having a fire extinguisher that:

(i) is easily accessible on each floor level that is used by the child care;

(ii) has a minimum level of extinguisher classification of 2A10BC with a hose;

and

(iii) is installed and maintained in accordance with the manufacturer's specifications;

(b) having operational UL smoke alarms on each floor of the facility that is used for child care that are:

(i) installed in accordance with the manufacturer's specifications;

(ii) installed in front of the doors to stairways, in corridors of all floors, and in all rooms where children sleep; and

- (iii) tested at least once a month to ensure that they are operating correctly and replaced every ten years or in accordance with the manufacturer's instructions;
- (c) ensuring all wood burning stoves meet building codes and have a protective enclosure if used during the hours of care;
- (d) not using portable electric or unvented fuel-fired heating devices, and ensuring all radiators, if too hot to touch, have a protective enclosure; and
- (e) using extension cords according to the manufacturer's specifications and not using extension cords to supply electricity to equipment or appliances that are fixed in place.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXV EMERGENCY AND DISASTER PREPARATION (1) All licensed and registered child care providers must have a written emergency disaster plan. The plan for each structure used for child care must be developed in such a way that the plan can be followed in the event of a natural or human-caused disaster or emergency.

(2) All licensed child care providers and registered group and family child care providers must conduct eight emergency drills per year, including six fire drills, and two other disaster drills. Providers should identify problems that occurred during the drill and take corrective actions.

(3) FFN providers must conduct at least two disaster drills per year, including one fire drill and one other disaster drill.

(4) All emergency drills must be documented and include the following minimum information:

- (a) who conducted the drill;
- (b) date and time of the drill;
- (c) the number of adults and children present during the drill; and
- (d) the length of time to evacuate.

(5) All licensed and registered child care facilities must have an emergency disaster kit including an emergency supply of blankets, water, food, and supplies.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE XXXVI SAFETY AROUND BODIES OF WATER (1) All licensed and registered child care providers except RCE providers must ensure all in-ground and above-ground swimming pools located in the outdoor play space area or accessible to children are surrounded by a fence that is least five feet high with a locked gate to prevent access to children. The fence must come within 3 1/2 inches of the ground and be constructed to discourage climbing. Exit and entrance points must have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall must not constitute one side of the fence unless there are no openings in the wall.

- (2) Children must not be permitted in hot tubs, spas, or saunas.
 - (a) Hot tubs must have bolted and securely locked covers.
 - (b) Spas and saunas must be inaccessible to children.
- (3) Ponds and other bodies of water on child care premises must be surrounded by a fence that is at least five feet high to prevent access by children.
- (4) Portable wading pools are permitted. If the portable wading pool is filled with water and will sit unused for any period of time prior to use by children, the program must equip the wading pool with a fence, wall, gate, or screen that locks to prevent unsupervised access by children.
- (5) When children are swimming or in any body of water, children must be continuously supervised consistent with the following requirements:
 - (a) Children under 36 months old must have 1:1 supervision and always be either in direct contact or within arm's reach of the supervising adult who must be in the water.
 - (b) Children ages three to five years old must be supervised using 4:1 child-to-staff ratio. Children must be within arm's reach of the supervising adult who must be in the water.
- (6) When children of any age are swimming in a pool or in a body of water without a lifeguard, a staff member with an advanced lifesaving or an equivalent certificate by a recognized organization must continuously supervise children. This staff member must not be counted in the child-to-staff ratio. One person with an advanced lifesaving or an equivalent certificate is required for each group of 25 or fewer children.
 - (a) A staff member must continuously supervise children using a portable wading pool.
- (7) Each swimming pool more than six feet in width, length, or diameter must be equipped with an easily accessible ring buoy and rope and either a throw line or a shepherd's hook of sufficient length to reach the center of the pool from the edge of the pool.
- (8) Swimming pool safety rules must be posted near the swimming pool.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, 52-2-735, MCA

NEW RULE XXXVII TRANSPORTATION SAFETY (1) If providing any transportation, all licensed child care providers and registered group and family child care providers must:

- (a) obtain written consent from the parents/guardians for any transportation provided; and
- (b) develop a written transportation policy that outlines safe transport practices. The plan must describe how children are transported to and from the program, in an emergency, and on field trips. The plan must also address the safety and supervision of children who walk or who arrive by public transportation once they arrive on the child care premises. The plan must include any special arrangements for children with disabilities.

(2) All licensed and registered child care providers providing transportation for children of any age must ensure:

- (a) that the operator of the vehicle transporting children be at least 18 years old and possess a valid Montana driver's license;
 - (b) that the passenger doors on the vehicle transporting children be locked whenever the vehicle is in motion;
 - (c) with the exception of public transportation that is not required by law to be equipped with safety restraints, that no vehicle begin moving until all children are seated and secured in age and weight-appropriate safety restraints, which must remain fastened at all times the vehicle is in motion;
 - (d) that all car seats and booster seats be used according to National Highway Traffic Safety Administration standards; and
 - (e) that children never be left unsupervised in a vehicle.
- (3) All licensed and registered child care providers providing transportation for children under six years old must ensure that an adult accompanies each child to and from the vehicle to the child's home or the home authorized by the parents/guardians to receive the child.
- (4) Providers using school buses must comply with the school bus regulations defined in ARM 10.7.110(3) through (5) and ARM 10.64.301.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, MCA

NEW RULE XXXVIII SLEEPING (1) In all licensed and registered child care facilities, except those used by school-age care programs, there must be adequate opportunities for sleep periods during the day in a safe sleep environment suited to individual needs.

(2) In all licensed and registered child care facilities, except school-age care programs, each child must have age-appropriate rest equipment and supervision that create a safe sleep environment, meaning:

- (a) for infants:
 - (i) each infant must be provided with a firm sleep surface;
 - (ii) if an infant sleeps in a crib, a firm mattress must be covered by a tight-fitting sheet. Mattresses must fit snugly to prevent the infant from being caught between the mattress and crib siderail;
 - (iii) unless the parents/guardians have provided medical documentation from a health care provider ordering otherwise, infants must be placed on their back and on a firm surface with no incline while sleeping;
 - (iv) no items are allowed in the crib when an infant is laid down for sleep except for a pacifier that does not include a string;
 - (v) sleep sacks and similar safe sleep clothing may be used if the item does not restrict the infant's arms;
 - (vi) infants under three months old may only be swaddled with written parent/guardian permission on file with the program;
 - (vii) infants over three months old or able to roll over must not be swaddled; and
 - (viii) when cribs are used, infants must be continuously supervised through sight or hearing, including proper use of audio or video monitors.

(A) In a licensed child care center, a staff member who is not a trainee must remain with children while they are sleeping;

(b) for toddlers 12 through 36 months old:

(i) children 12 to 18 months old who are placed on a cot or mat must have a signed permission statement in the file indicating that parents/guardians have given permission for their child to be placed on a cot or mat;

(ii) toddlers may be provided a clean washable blanket or other suitable covering for their use while sleeping; and

(iii) when cots and mats are used, toddlers must be continuously supervised through sight or hearing, including proper use of audio or video monitors.

(A) In a licensed child care center, a staff member who is not a trainee must remain with children while they are sleeping.

(3) All cries of children during sleep times must be investigated.

(4) Any facility providing night care must have a supervision plan which involves practices where no child is left unattended. Staff must be in the immediate vicinity and on the same floor level of sleeping children to adequately hear and respond to the children if they wake up and to respond to any emergency.

(5) Children of any age must not be allowed to sleep in a car seat, infant swing, bouncy seat, or other infant apparatus.

(6) Sleeping equipment must be thoroughly cleansed before assignment to another child.

(7) Crib mattresses must be waterproof and easily sanitized.

(8) Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.

(9) Each child's bedding must be stored separately.

(10) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices.

(11) All cribs must meet the requirements as specified by the U.S. Consumer Product Safety Commission.

(12) Cribs, cots, or mats must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit.

(13) The use of stackable cribs for infants is permitted until the infants reach one year old or weigh 26 pounds, whichever comes first.

(14) Licensed child care providers and registered group and family child care providers must develop a policy that describes the practices to be used to promote a safe sleeping environment when children are sleeping.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXIX MEDICAL HEALTH DEFINITIONS (1) "CPR" means cardiopulmonary resuscitation.

(2) "Health care provider" means a person who is licensed, certified, or otherwise authorized by any U.S. state or by Canada to provide health care and who meets the additional qualifying criteria specified in 20-5-405, MCA.

(3) "Local health authority" or "local health jurisdiction" means a local health officer, local department of health, or local board of health.

(4) "Medication" includes "prescription medication" and "over-the-counter medication" as defined in this rule.

(5) "Over-the-counter medication" means any medication, ointment, or cream that is topical or oral and is not specifically prescribed by a health care provider, but is recommended by a health care provider or a parent or guardian for a specific child.

(6) "Physician" means a person licensed to practice medicine in any jurisdiction in the United States or Canada and who holds a degree as a doctor of medicine or of osteopathy.

(7) "Prescription medication" means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy.

(8) "Supplement" means vitamins, herbals, and other topical or oral substances that are not regulated by the U.S. Food and Drug Administration.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XL MEDICATION ADMINISTRATION (1) No child care staff of any type of licensed or registered child care provider may administer any medication or supplement to a child without the written authorization of a parent or guardian. The authorization must include the child's name, duration of the authorization, dosage instructions (amount and time), and the signature of the child's parent or guardian.

(2) Any medication or supplement brought into the facility for use by a specific child must be labeled with the following information:

- (a) the date range and duration of use;
- (b) the child's first and last name;
- (c) the expiration date and specific, legible instructions for administration and storage (i.e., the manufacturer's instructions); and
- (d) the name of the health care provider, parent, or guardian who made the recommendation.

(3) Any prescription medication brought into the facility by the parent or guardian of a child must be kept in the original container labeled by a pharmacist with the date the prescription was filled.

(4) All medications and supplements for children and staff must be kept in a location inaccessible to children.

(5) All medications for children and staff, refrigerated or unrefrigerated, must:

- (a) have child-protective caps;
- (b) be kept in an orderly fashion; and
- (c) be stored away from food and at proper temperatures.

(6) Medication and supplements must not be used beyond the date of expiration. Expired medication and supplements must be properly disposed of or removed from the child care facility.

(7) If an emergency arises and the parent or guardian of the child is unavailable, child care staff may administer medication to a child if either:

(a) a health care provider provides a written authorization containing the child's name, dates for which the authorization is applicable, dosage instructions, and the health care provider's signature; or

(b) a health care provider, emergency service provider, or 911 responder verbally directs the child care staff to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a health care provider for follow up care within a reasonable time by the child's parent or guardian or by child care staff.

(8) Child care staff may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a health care provider as provided in 52-2-736, MCA.

(9) If the child care provider elects to administer medication or supplements to children, the provider must maintain a medication administration log with the time, date, and dosage each time the medication is administered to an individual child.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-732, 52-2-733, 52-2-736, MCA

NEW RULE XLI MANAGEMENT OF ILLNESS (1) All licensed and registered child care providers must designate a staff member to check daily the health status of each child immediately upon that child's entry into the child care facility.

(2) All licensed and registered child care providers must exclude any child or staff member with an illness until symptoms have resolved, adequate treatment has been received, or a health care provider states that the person is noninfectious. The following symptoms or illnesses require exclusion:

(a) a fever of 100.4°F that is accompanied by behavior change or other symptoms;

(b) diarrhea;

(c) vomiting more than two times in the previous 24 hours;

(d) mouth sores with drooling, if unable to contain drool, unless a health care provider states that it is a noninfectious condition;

(e) a rash with fever or behavioral change or a rash that is quickly spreading, unless a health care provider states that it is a noninfectious condition;

(f) active tuberculosis, until a health care provider states that the person is noninfectious and can return;

(g) group A strep pharyngitis (strep throat) until the person appears well and at least 12 hours after beginning appropriate antimicrobial therapy;

(h) impetigo, until treatment is initiated and if lesions on exposed skin are covered with a waterproof dressing;

(i) head lice, scabies, or ringworm, until treatment is started. Children and staff can remain in the child care setting until the end of the day;

(j) chickenpox (varicella), until sores have dried or crusted. Child care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents/guardians;

(k) rubella, until seven days after the rash appears;

(l) pertussis, until five days after antibiotic treatment was initiated;

(m) mumps, until five days after onset of parotid gland swelling;

(n) measles, until four days after onset of rash;

(o) hepatitis A, until one week after onset of illness or as directed by the local health authority;

(p) shigellosis, salmonella, or E. coli, until a local health authority clears the person for readmission; or

(q) if the child is unable to participate in activities or needs care from staff that compromises the health or safety of other children.

(3) Children and staff must be excluded from all child care facilities, and a health care provider must evaluate the conditions to ensure the person's return will not harm that person or the other people, when a child or staff:

(a) has symptoms of severe illness, such as fever with behavior change, lethargy, uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, persistent crying, poor food or fluid intake, progressive rash with any other symptoms, or a seizure; or

(b) has persistent abdominal pain for two or more hours, or intermittent abdominal pain associated with fever, dehydration, or other signs or symptoms of illness.

(4) A child or staff member does not need to be excluded, but a child's parents/guardians should be notified of new onset, for minor illnesses or symptoms including:

(a) a runny nose or cough not accompanied by a fever;

(b) pinkeye or other eye discharge not accompanied by fever;

(c) fever without behavior change for people aged four months and older, including children with immunization-related fevers; or

(d) rash without behavior change or fever and that is not quickly spreading.

(5) If a child develops symptoms of any illness other than those included in (2) or (3) while at the child care facility and after the parents/guardians have left, the child care provider must:

(a) isolate the child immediately from other children in a room or area segregated for that purpose; and

(b) contact and inform the parents/guardians as soon as possible about the illness and request they pick up the child.

(6) Disease charts that identify reportable diseases are available from the department. A child care provider must notify the local health authority, on the same day or as soon as possible if no contact can be made the same day, if:

(a) a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care;

(b) a child is absent and a reportable communicable disease is suspected; or

(c) there is an outbreak of any reportable communicable disease detected in a child care facility.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-735, MCA

NEW RULE XLII FIRST AID (1) All child care facilities must maintain a complete, well-stocked, portable first aid kit. The first aid kit must accompany staff and children on trips away from the facility and must contain:

- (a) sterile, absorbent bandages;
- (b) antiseptic wipes or product to clean wounds and hands;
- (c) a cold pack;
- (d) tape and a variety of adhesive bandages;
- (e) tweezers and scissors; and
- (f) disposable single use gloves.

(2) Child care staff must take appropriate precautions to minimize the risk of any child suffering sunburn, heat stroke, or receiving insect bites. Children under six months old should be kept out of direct sunlight.

(a) Sunscreen must be applied to children over six months old when outdoor conditions dictate.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-736, MCA

NEW RULE XLIII ENVIRONMENTAL HEALTH DEFINITIONS (1) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

(2) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.

(3) "Smoke-free environment" means no smoking, vaping, or use of e-cigarettes.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

NEW RULE XLIV HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES (1) Licensed child care providers must provide to CCL an annual training or inspection certificate from their local health authority, except:

(a) Providers using a commercial or public space that receive an annual public health inspection, such as a school, do not need a separate inspection. The child care provider is responsible for providing a copy to CCL.

(2) Child care facilities requiring a public health inspection may request a waiver of any of the environmental health rules in this subchapter. Child care providers will submit a written plan to CCL describing an alternative approach with

respect to the rule from which they are seeking a waiver, and how this approach supports child and staff health and safety.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE XLV SMOKE-FREE ENVIRONMENT (1) All licensed and registered child care providers except RCE providers must provide and ensure a smoke-free and tobacco-free environment for children, ensuring there will be no smoking or use of vapor, tobacco, or alternative nicotine products other than cessation products indoors during child care hours, or outdoors while children are outdoors.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-731, MCA

NEW RULE XLVI OUTDOOR AIR QUALITY (1) All licensed and registered child care providers except RCE providers must reference the guidelines in ARM 37.111.827 to determine local air quality conditions and whether to cancel outdoor activities.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-731, MCA

NEW RULE XLVII INDOOR AIR QUALITY (1) Centralized ventilation systems and air filters in child care facilities, excluding RCEs, must be properly maintained.

(2) Licensed child care facilities must ensure that the temperature is maintained at a minimum of 65°F in the areas used for child care.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-731, MCA

NEW RULE XLVIII HAND HYGIENE (1) Staff, volunteers, and children in all licensed and registered child care facilities, excluding RCEs, must learn and follow good handwashing practices at the following times:

- (a) before and after:
 - (i) preparing or handling food or beverages, eating, or feeding a child;
 - (ii) giving medication or applying a medical ointment or cream; and
 - (iii) diapering;
- (b) after:
 - (i) using the toilet or helping a child use a toilet;
 - (ii) handling bodily fluid (mucous, blood, vomit) from sneezing, wiping and blowing noses, or from mouths or from sores;
 - (iii) handling animals or cleaning up animal waste;
 - (iv) cleaning or handling the garbage; and
 - (v) applying sunscreen and/or insect repellent.

(2) All licensed child care providers and registered group and family child care providers must provide soap and disposable or single-use towels or other hand-drying devices at all hand washing sinks. Common-use cloth towels are prohibited.

(3) All licensed child care providers must post hand washing signs in all food preparation, hand washing, diapering, and toileting areas.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE XLIX BATHROOM HYGIENE (1) Licensed child care facilities must provide lavatories (sinks), water closets (toilets), and urinals in the ratio of the number of each to the number of individuals using them, including children, staff, and volunteers, as follows:

(a) lavatories (sinks): 1:15;

(b) water closets (toilets): 1:15; and

(c) for urinals, substitute half of the number of toilets required, if over 20 males.

(2) All licensed and registered child care facilities must provide toilet tissue next to all toilets.

(3) Hand sinks in all licensed and registered child care facilities must have water at a temperature of at least 100°F and not more than 120°F.

(4) In licensed and registered child care facilities where tooth brushing is an activity, toothbrushes must be managed in a way that avoids contamination.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE L SOLID WASTE MANAGEMENT (1) All licensed and registered child care providers must ensure that solid waste is safely stored and disposed of.

(a) Store all solid waste between removals in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof.

(b) Clean all solid waste containers frequently.

(c) Store solid waste containers in a way that prevents the containers from being tipped, protects them from deterioration, and allows easy cleaning below and around them.

(d) Remove solid waste at least weekly.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-731, MCA

NEW RULE LI LAUNDRY AND CLOTHING (1) All licensed and registered child care providers must ensure that children's wet or soiled clothing is changed promptly. Facilities must have a supply of spare clothing to allow at least one change per day. Soiled clothing must be placed in a sealed bag and returned to the parent or guardian.

(2) Licensed and registered child care providers must ensure that soiled laundry does not endanger the health of children by:

- (a) refraining from storing soiled laundry in a dining, food preparation, or food storage room;
 - (b) ensuring soiled laundry is not accessible to children;
 - (c) providing sufficient space for sorting and storing clean and soiled laundry so clean and soiled laundry do not contact the same surface or each other; and
 - (d) laundering bedding whenever it is soiled.
- (3) Staff working with infants in licensed child care facilities must ensure clothing worn to and from work is covered by or replaced with a clean, comfortable, nonirritating, and washable smock or similar clothing.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-731, MCA

NEW RULE LII SANITATION (1) All licensed and registered child care providers must:

- (a) provide sanitary drinking facilities for each child;
- (b) clean and sanitize their toys routinely. Toys must be cleaned and sanitized in a solution containing one tablespoon of unscented household bleach to one gallon of water, and then either washed through the sanitizing cycle of the dish washer or rinsed with clean hot water, and then air dried;
- (c) use cleaning products in accordance with the manufacturer's instructions;
- (d) keep cleaning devices for toilets and urinals, sinks, and tubs separate from each other, and do not use such cleaning devices for any other purpose; and
- (e) store cleaning compounds, pesticides, and cleaning devices for toilet bowls, toilet seats, or urinals separately and out of the reach of children. Cleaning compounds must be disposed of in accordance with the manufacturer's instructions.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE LIII DIAPERING (1) All licensed child care providers and registered group and family child care providers that care for children requiring diapers must:

- (a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;
- (b) ensure diapering and toileting areas contain a wash basin that is separate from that used for food preparation;
- (c) have available a sufficient supply of clean, dry diapers, and change diapers as frequently as needed. Disposable diapers, a commercial diaper service, or reusable cloth diapers supplied by the child's family may be used;
- (d) use soft, absorbent, disposable towels, or clean reusable towels which have been laundered between each use for cleaning the child;
- (e) keep safety pins out of reach of children;
- (f) not leave children being diapered unattended on a surface from which they might fall;

(g) specifically label all toilet articles for each child. Each item must be separated and kept in a sanitary condition;

(h) clean surfaces after each diapering and change the pad or disposable sheeting (if used). Sanitize surfaces using a solution of one tablespoon of unscented household bleach to one gallon of water, rinse with clean water, and air dry;

(i) store soiled disposable diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, clean, and wash the receptacles once per day or more often as needed. Soiled disposable diapers must be disposed of immediately into an outside trash disposal or discarded indoors in a way that is inaccessible to children until outside disposal is possible;

(j) place soiled reusable cloth diapers in a labeled container with a tight-fitting lid provided by a commercial diaper service, or in a sealed waterproof bag or container for removal from the facility by an individual child's family. Soiled cloth diapers should be sent home with the child at the end of each day. The containers or sealed diaper bags of soiled cloth diapers should not be accessible to any child; and

(k) ensure the hands of the diapered child are washed after changing.

(2) Toilet training must only be initiated when the child is ready and in consultation with the child's parents or guardian. There must not be a routine attempt to toilet train children under 18 months old.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE LIV BATHING (1) If bathing is necessary, licensed child care providers and registered group or family child care providers must:

(a) directly supervise children when being bathed;

(b) sanitize bathing materials after bathing each child;

(c) use non allergenic soap; and

(d) make sure children cannot turn on hot water while being bathed. Water supply to bathing area must not exceed 120°F.

(2) Bathing facilities must be separate from food service, food preparation, and play or sleeping areas.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE LV WATER SUPPLY SYSTEM (1) All child care facilities must provide an adequate and potable supply of water that is connected to a public water supply system in accordance with 75-6-102, MCA.

(2) If the child care facility uses a nonpublic water system source, the program must:

(a) have the water source tested prior to operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. coli bacteria;

- (b) provide laboratory test results to the department as part of the licensing and registration or license/registration renewal process; and
- (c) take corrective action as needed to ensure the water is safe to drink.
- (3) Prior to operation, the water source of all licensed child care facilities must be tested to determine that the maximum contamination levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded, and documentation of testing must be retained on the premises for 24 months from the date of the test.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE LVI SEWAGE SYSTEM (1) All child care facilities must have an adequate and safe sewage system.

(2) The child care facility must:

(a) be connected to a public sewage system in accordance with 75-6-102, MCA; or

(b) if a nonpublic system is used, retain documentation that it has complied with sewage disposal requirements adopted by the local board of health in the jurisdiction in which the child care facility is located as well as documentation of any necessary sewage system repairs or replacement.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE LVII SWIMMING POOL SANITATION (1) All licensed child care providers and registered group and family child care providers must allow children to only use swimming pools that are maintained in accordance with ARM 37.115.102, 37.115.103, and 37.115.106.

(2) Licensed child care providers and registered group and family child care providers using a portable wading pool must add one tablespoon household bleach to 100 gallons of water to the pool on the day of use, drain, clean, and refill it with fresh water daily and as otherwise needed. Bleach must be added any time the pool is refilled.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE LVIII FOOD PREPARATION AND HANDLING (1) At a minimum, all licensed child care providers and registered group and family child care providers must:

(a) cook food to the proper temperatures:

(i) chicken, poultry, stuffed foods, and leftovers to 165°F;

(ii) ground meats (including fish, e.g., fish sticks) to 155°F;

(iii) eggs, whole cuts of pork and fish to 145°F; and

(iv) vegetables and fruits for hot holding to 135°F;

(b) hold hot food prior to serving and after cooking at 135°F or hotter;

- (c) keep cold food at or below 41°F;
 - (d) use milk and other dairy products that are pasteurized;
 - (e) require that hands be properly washed, and single use gloves, tongs, single use napkins, utensils, or deli tissues be used to handle food; and
 - (f) ensure no people with open wounds or communicable diseases handle food or food utensils.
- (2) Licensed child care providers must at a minimum:
- (a) obtain food from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and not use home canned foods;
 - (b) dispose of food that has been in family-style service containers, on the table, or in the service area after the meal; and
 - (c) manage food that is not served family-style in the following way:
 - (i) cool food and place in the refrigerator within two hours of the meal; and
 - (ii) reheat food to 165°F within one hour prior to meal service and do not mix with new batches of food.
- (3) All licensed child care providers and registered group and family child care providers must ensure that a probe type thermometer is available in the facility to check food temperatures and that the thermometer is calibrated and used following the manufacturer's specifications.
- (4) If using a domestic style dishwasher, all licensed child care providers and registered group and family child care providers must use the heat option to dry the dishes.
- (a) Licensed child care facilities must provide at least a two-compartment sink as a backup in the event the dishwasher becomes inoperable.
- (5) If any licensed child care facility uses a two-compartment sink to hand-wash dishes, the provider must use the wash, rinse, and sanitize three-step process.
- (a) All dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution, at a concentration indicated on the manufacturer's label, then rinsed with clear water separately, and then dipped/soaked in sanitizer solution in a separate compartment or container that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute. Dishes must be air dried before being stored.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE LIX NUTRITION AND FOOD SERVICE DEFINITIONS

- (1) "CACFP" means the Child and Adult Care Food Program as designated in section 17 of the National School Lunch Act as amended (codified at 42 USC 1766 and effective as of December 13, 2010).
- (2) "Nutritious meals and snacks" means quality and quantity of food that meets the USDA CACFP guidelines in 7 CFR 226.20 as of February 7, 2022.
- (3) "USDA" means the United States Department of Agriculture.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE LX NUTRITION REQUIREMENTS (1) All licensed child care providers and registered group and family child care providers must:

(a) provide nutritious meals and snacks to children in such quality and quantity to meet the USDA CACFP recommended dietary allowances for children of each age or have a policy stating that parents/guardians are required to send food for meals and/or snacks;

(b) serve meals and snacks at standard times, to ensure that:

(i) children in care for five to ten daytime hours are offered at least one meal and two snacks or two meals and one snack. Children must be offered a mid morning snack if they are not offered breakfast at the child care facility less than 2 1/2 hours before lunch;

(ii) children in care for a continuous period of ten hours or more must be provided at least one meal every six hours and one snack between meals. The six-hours requirement does not apply during the hours that the child is sleeping when night care is provided;

(iii) children receiving night care are offered dinner and/or breakfast, and a bedtime snack; and

(iv) children in care for fewer than five hours are offered one snack every 2 1/2 hours;

(c) for each child with nutritional therapeutic needs, request and carefully follow written special dietary instructions from either the child's parents/guardians or health care provider. Food brought from home for special dietary purposes must be carefully labeled with the child's name;

(d) plan menus in advance, post menus for parents/guardians, and serve meals and snacks in accordance with the planned menus;

(e) supervise children if they prepare food and while they eat;

(f) ensure that drinking water is freely available and offered at regular intervals to all children; and

(g) retain written menu records and any special dietary instructions.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXI INFANT FEEDING (1) All licensed and registered child care providers must provide an individualized diet and feeding schedule for infants according to a written plan submitted by the parents/guardians. A change of diet and schedule must be noted on each infant's daily diet and feeding schedule.

(a) Licensed child care providers must post each infant's diet and schedule in an area clearly visible to the center's infant care staff.

(2) A day's supply of breast milk in nursing bottles or formula must:

(a) require no more preparation than dilution with water and must be provided by the parents/guardians, unless an alternative agreement is reached between the parents/guardians and child care provider that ensures the infant's nutritional needs are sufficiently met; and

(b) be clearly labeled with each infant's name and date and be immediately refrigerated.

(3) Special dietary foods that infants require must be prepared by the parents/guardians.

(4) Bottles must be prepared in a sanitary food preparation sink or other sink separated by at least six feet from diapering and bathroom areas.

(5) Bottles must not be propped. Children too young to sit in high chairs must be held in a semi-sitting position for all bottle feedings.

(a) Infants must not be allowed to lie on their backs when drinking from a bottle or spill-proof cup (sippy cup).

(b) Infants who show a preference for holding their own bottles may do so if the infant is still held for the bottle feeding and the infant remains in a semi-sitting or upright position.

(6) If the parents/guardians are unable to bring sufficient or usable formula or breast milk, the program may use commercially prepared and packaged formula.

(7) Older infants must be provided suitable foods which encourage freedom in self-feeding.

(8) Bottles must be refrigerated immediately if not used, and contents discarded if not used within 24 hours.

(9) Bottles and nipples must be cleaned and sanitized using generally accepted means of sanitation.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

NEW RULE LXII FOOD SERVICE EQUIPMENT (1) All licensed and registered child care providers must provide one piece of age-appropriate feeding equipment for every four infants or toddlers. This includes safe high chairs, baby feeding tables, booster seats, and child-size tables and chairs. These types of equipment must be used in accordance with the manufacturer's specifications.

(2) Portable high chairs that hook onto tables are not allowed in any licensed or registered child care facility.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

NEW RULE LXIII IMMUNIZATION DEFINITIONS (1) "ACIP" means the Advisory Committee on Immunization Practices, which provides advice to the U.S. Centers for Disease Control and Prevention on routine administration of vaccines to pediatric and adult populations.

(2) "Adequate documentation" means documentation which meets the specifications set forth in [NEW RULE LXVI].

(3) "CLIA" means the federal clinical laboratory improvement amendments of 1988.

(4) "Conditional attendance" means that children are allowed to attend child care on a conditional basis until they meet the requirements of an established vaccination schedule.

(5) "Conditional Attendance Form (HES 103)" means the form used by parents or guardians and health care providers to allow children to attend child care on a conditional basis until they meet vaccination requirements on a set schedule.

(6) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids.

(7) "DTP vaccine" and "DTAP vaccine" mean vaccines containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid, and acellular pertussis vaccine combined.

(8) "Hep B vaccine" means a vaccine containing Hepatitis B vaccine.

(9) "Hib vaccine" means a vaccine immunizing against infection by *Haemophilus influenza* type B disease.

(10) "Immunization information system" means a confidential, computerized, population-based system managed and maintained by the department that collects and consolidates vaccination data from vaccine providers.

(11) "Medical exemption" means a vaccination exemption from a health care provider indicating that the physical condition of the child is such that one or more vaccinations would endanger their life or health or is medically contraindicated.

(12) "Medical Exemption Statement Form (HES 101A)" means the form provided by the department to document a medical exemption(s) from one or more vaccinations.

(13) "MMR vaccine" means a vaccine containing a combination of measles, mumps, and rubella vaccines.

(14) "Montana Certificate of Immunization Form (HES 101)" means the form provided by the department to consolidate immunization history.

(15) "MR vaccine" means a vaccine containing a combination of measles and rubella vaccines.

(16) "Official vaccination record" means a standard electronic or paper record that is maintained by the department, by another state's principal health agency, or by a healthcare provider to record the vaccination status of a child, and includes the following:

(a) child's legal name;

(b) birth date;

(c) sex; and

(d) vaccination date (month, day, and year) by vaccine type, or, in the case of a post secondary record, the month and year of vaccine administration.

(17) "PCV vaccine" means a vaccine containing pneumococcal conjugate vaccine.

(18) "Polio vaccine" means a trivalent polio vaccine.

(19) "Religious exemption" means a vaccination exemption based on an affidavit of exemption on religious grounds attesting that receipt of a vaccine or vaccines is contrary to an individual's religious belief, observance, or practice.

(20) "Religious exemption form" means an affidavit of exemption on religious grounds from vaccine administration.

(21) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids.

(22) "Tdap vaccine" means a vaccine containing tetanus and diphtheria toxoids, and acellular pertussis.

(23) "Vaccine" means:

(a) if administered in the United States, an immunizing agent recommended by ACIP and licensed by the U.S. Food and Drug Administration; or

(b) if administered outside of the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 37.114.708.

(24) "Varicella vaccine" means an attenuated, live virus vaccine to prevent chicken pox disease.

AUTH: 52-2-704, 52-2-735, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE LXIV MINIMUM CHILD IMMUNIZATION REQUIREMENTS

(1) Children attending all licensed and registered Montana child care facilities are required to be immunized against certain diseases. Minimum child immunization requirements apply to children in all child care facilities with exceptions described in [NEW RULE LXV]. Before a child may attend any licensed or registered Montana child care program, a program must be provided with documentation that the child has been vaccinated, as required for the child's age group, against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal disease (pneumonia), and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (5) or has a medical or religious exemption:

Age at Entry	Number of Doses – Vaccine Type
under 2 months old	no vaccinations required
by 3 months old	1 dose of polio vaccine
	1 dose of DTP vaccine
	1 dose of Hib vaccine
	1 dose of Hep B vaccine
	1 dose of PCV vaccine
by 5 months old	2 doses of polio vaccine
	2 doses of DTP vaccine
	2 doses of Hib vaccine
	2 doses of Hep B vaccine
	2 doses of PCV vaccine

by 7 months old	2 doses of polio vaccine
	3 doses of DTP vaccine
	2 or 3 doses of Hib vaccine*
	2 doses of Hep B vaccine
	3 doses of PCV vaccine
by 16 months old	2 doses of polio vaccine
	3 doses of DTP vaccine
	1 dose of varicella vaccine
	1 dose of MMR vaccine
	3 or 4 doses of Hib vaccine*
	2 doses of Hep B vaccine
	4 doses of PCV vaccine*
by 19 months old	1 dose of varicella vaccine
	3 doses of polio vaccine
	4 doses of DTP vaccine
	1 dose of MMR vaccine
	3 or 4 doses of Hib vaccine*
	3 doses of Hep B vaccine
	4 doses of PCV vaccine*
by 6 years old	3 doses of polio vaccine, one given after the 4th birthday
	4 doses of DTP vaccine, one given after the 4th birthday
	2 doses of varicella vaccine
	2 doses of MMR vaccine
	3 doses of Hep B vaccine
by 12 years old	3 doses of polio vaccine, one given after the 4th birthday
	1 dose of Tdap vaccine
	2 doses of varicella vaccine
	2 doses of MMR vaccine
	3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) Hib and PCV vaccines are not required or recommended for children five years old and older.

(3) Doses of MMR and varicella vaccines, to be acceptable under this rule, must be given no earlier than 12 months old, and a child who received a dose prior to 12 months old must be revaccinated; however, vaccine doses given up to four days before the minimum interval or age are counted as valid. Live vaccines not administered at the same visit must be separated by at least four weeks.

(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) a child less than seven years old must be administered four or more doses of DTP or DTaP vaccine, at least one dose of which must be given after the fourth birthday;

(b) DT vaccine administered to a child less than seven years old is acceptable for purposes of this rule only if accompanied by a medical or religious exemption exempting the child from pertussis vaccination; and

(c) a child seven years old or older who has not completed the requirement in (1) must receive additional doses of Tdap vaccine or Td vaccine to become current in accordance with the ACIP schedule.

(5) A child may initially conditionally attend a child care facility if:

(a) the child has received at least one dose of each of the vaccines required for the child's age;

(b) documentation of the child's conditional immunization status is on file at the child care facility; and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(6) Children attending licensed school-age care facilities serving only school-age children must meet the minimum student immunization requirements defined in ARM 37.114.702 and 20-5-403, MCA.

(7) Children in a sibling group receiving care from a registered FFN in the children's home are not subject to the immunization requirements, provided there are no unrelated children also receiving care.

(8) Children receiving care through registered RCE providers are not subject to vaccination requirements.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXV EXEMPTIONS FROM VACCINATION (1) A child is exempt from receiving the required vaccinations when the requirements of any of the following are met:

(a) Medical exemption: A child is not required to have any vaccinations which are medically contraindicated. A written and signed statement from a health care provider that a vaccination otherwise required by [NEW RULE LXIV] is medically contraindicated will exempt a child from those vaccination requirements as deemed necessary by the health care provider. It is preferred, but not mandatory, that a health care provider's medical exemption be recorded on HES-101A. Medical exemption documentation must include:

(i) which specific vaccination is contraindicated;

(ii) the period of time during which the vaccination is contraindicated;

(iii) the reasons for the medical contraindication; and

(iv) when deemed necessary by a health care provider, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

(b) Religious exemption: A child seeking to attend a child care program is not required to be vaccinated if the child's parent or guardian attests that vaccination is contrary to their religious belief, observance, or practice. An exemption on religious grounds must be maintained on an Affidavit of Exemption on Religious Grounds Form (HES-113) prescribed by the department.

(i) A certificate of religious exemption is required only for the required vaccines listed in [NEW RULE LXIV].

(c) A child experiencing homelessness or a child in foster care is exempt from required vaccinations outlined in [NEW RULE LXIV(1)] for a 30-day grace period beginning the first day the child attends a child care program as verified on the sign-in/sign-out records.

(i) The child experiencing homelessness must meet the definition in 42 U.S.C. 11434a (2).

(ii) A child is in foster care when the foster care environment meets ARM 37.50.101(4).

(iii) A child must meet the vaccination requirement for conditional enrollment outlined in [NEW RULE LXIV(5)] before the end of the 30-day period.

(iv) A child may not be granted consecutive grace periods.

(2) Family child care providers, group child care providers, and registered FFN providers may choose whether to enroll children who have a medical or religious exemption to the minimum immunization schedule included in [NEW RULE LXIV(1)]. These providers must have written policies and procedures to notify the parents/guardians of prospective and enrolled children of this choice.

(a) These policies will be made available upon request to families prior to enrolling their children with a child care provider.

(b) Policies must be submitted to CCL.

(3) School-age care facilities serving only school-age children must accept school vaccination exemptions, including medical exemption statements from ARM 37.114.715 and religious exemptions defined in ARM 37.114.716.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXVI. REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS (1) All licensed and registered child care providers must have received completed immunization documentation, in accordance with this rule, before any child can be enrolled into a child care facility. The child care provider must maintain a record of immunization status for each enrolled child, and any child of a staff member who resides at the child care facility, with respect only to the vaccines, number of doses, and timing set forth in [NEW RULE LXIV]. The provider must make those records available during normal working hours to representatives of the department or the local health authority.

(2) The following are considered adequate documentation of vaccination for the purposes of this chapter:

(a) a record from any local health department in the United States, signed by a local health officer or nurse;

(b) a certificate signed by a local health officer or nurse;

- (c) any official immunization record, if information has been recorded and signed by a physician, physician's designee, local health officer, or that officer's designee; or an official report from the statewide immunization information system, or a health care provider's medical record system;
 - (d) immunization recorded on a form approved by the U.S. government;
 - (e) any state's official parent-maintained immunization record;
 - (f) an international certificate of vaccination on a form approved by the World Health Organization; or
 - (g) in the case of a vaccine administered outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.
- (3) Vaccine administration data may not be filled out by a parent, guardian, or other person unless they are a health care provider, health department official, or person otherwise authorized to do so by this subchapter.
- (4) The following are considered adequate documentation in lieu of receiving required vaccines:
- (a) the conditional enrollment form prescribed by the department;
 - (b) a medical exemption;
 - (c) a religious exemption; or
 - (d) documentation of immunity from varicella, measles, mumps, or rubella by laboratory evidence or diagnosis/verification of disease by physician, nurse practitioner, or physician's assistant. The tests must indicate serological evidence of immunity and must be performed by a CLIA-certified lab. A copy of the test results must be attached to the child's official immunization record.
- (5) Parents or legal guardians of students attending school must provide a written parental statement that the required immunization is on file with the child's school. Parents/guardians of these students do not have to provide other immunization documentation to school-age care facilities.

AUTH: 20-5-407, 52-2-704, 52-2-735, MCA

IMP: 20-5-402, 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXVII EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS

(1) The department and local health authority representatives have the right to audit and verify child vaccination records maintained by licensed and registered child care providers to determine compliance with vaccination requirements.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-732, 52-2-733, 52-2-735, MCA

NEW RULE LXVIII IMMUNIZATION STATUS AS CONDITION OF ATTENDANCE

(1) In order to continue to attend a licensed or registered child care facility, a child must continue to be vaccinated on the schedule described in [NEW RULE LXIV(1)] and must be immediately excluded from attendance if the child:

- (a) is not vaccinated on that schedule with all of the required vaccines;

(b) does not have on file at the child care program a record of medical exemption, religious exemption, a conditional enrollment form which indicates that no vaccine dose is past due; or

(c) does not meet the exemption for a child experiencing homelessness or a child in the foster system.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE LXIX QUALIFICATIONS AND TRAINING DEFINITIONS

(1) "Director" means the person designated as the person responsible for the daily operation of a child care facility. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility.

(2) "Lead teacher" means the lead staff person in charge of a child or group of children who implements facility activities.

(3) "On-the-job training" is training provided by the director or designee, during business hours, to educate new staff members on facility and provider-specific policies, procedures, and department requirements pertaining to their role.

(4) "Orientation training" means initial required training to educate new staff.

(5) "Practitioner Registry" is a statewide registry that is used to help develop and track a knowledgeable and skilled child care workforce based on an individual's verified professional achievements.

(6) "Site director" means the person who plans and implements child care services at one site of a multi-site program under the oversight of the director.

(7) "Staff" refers to all persons who work or substitute in a child care facility and count in the child-to-staff ratio during hours when children are or may be present, excluding licensees or registration holders.

(8) "Substitute" means any person not regularly employed by a child care provider who temporarily takes the place of an approved staff person, other than the director.

(9) "Teacher" means a program staff member who carries out assigned caregiving and teaching tasks under the guidance and oversight of a lead teacher or program director.

(10) "Trainee" means a staff member who has been approved to work in a child care facility based on initial criteria but has not yet completed required training.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE LXX DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

(1) All facilities except RCEs must have a director.

(a) For the purposes of this rule, FFN providers are considered a director.

(2) A director and their program staff are responsible for the health, safety, supervision, protection, and guidance of the children in care. The director is responsible for operating the child care program at all times.

(3) A director must demonstrate knowledge and ability to carry out day-to-day operations and is responsible for being on-site at the facility, unless there is a site director, designated staff member, or substitute filling the on-site role.

(4) Directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in [NEW RULE LXXXI];

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training; and

(f) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the director responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

(5) If the director will be absent from the facility for more than 30 continuous days, the director must notify the department in writing of the individual who has been appointed as the designee. The appointed designee must meet all the requirements of this rule.

(6) The director must ensure compliance with all applicable administrative rules within this chapter.

(7) The director or designee must review every incident or accident causing injury to a child resulting in medical or dental care and document the appropriate corrective action taken to avoid a reoccurrence.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXI SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS (1) Site director is an optional role. Providers may employ site directors when they have multiple facilities in geographically dispersed locations. An individual may only serve as a site director at one location or site. Site directors plan and implement facility services under the oversight of the director/owner.

(2) Site directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in [NEW RULE LXXXI];

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training;

(f) complete on-the-job training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the site director responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

(3) The site director is responsible for being on-site during the facility's operating hours and providing regular supervision and mentoring of lead teachers, teachers, substitutes, support staff, and volunteers.

- (4) One person may be the director and site director.
- (5) A site director may also serve as a lead teacher.
- (6) The director absence requirements in [NEW RULE LXX] apply to site directors.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXII LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS (1) Lead teacher is an optional role.

- (2) Lead teachers are responsible for facility activity planning and delivery.
- (3) A lead teacher must:
 - (a) be at least 18 years old;
 - (b) have satisfactory results of background checks as set forth in [NEW RULE LXXXI];
 - (c) complete on-the-job training;
 - (d) be current on the Practitioner Registry;
 - (e) have current CPR and pediatric first aid certification;
 - (f) successfully complete required orientation training; and
 - (g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the lead teacher responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIII TEACHER RESPONSIBILITIES AND QUALIFICATIONS

- (1) Teacher is an optional role.
- (2) Teachers help a lead teacher or director provide instructional support to children and implement developmentally appropriate programming.
- (3) Teachers must:
 - (a) receive oversight and guidance from a lead teacher, site director, or director;
 - (b) be at least 16 years old;
 - (c) have satisfactory results of background checks as set forth in [NEW RULE LXXXI];
 - (d) complete on-the-job training;
 - (e) be current on the Practitioner Registry;
 - (f) have current CPR and pediatric first aid certification; and
 - (g) successfully complete required orientation training.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIV SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS (1) Substitutes must:

- (a) have satisfactory results of background checks as set forth in [NEW RULE LXXXI];
- (b) meet the age requirement for the role for which they are substituting;
- (c) complete on-the-job training;
- (d) be current on the Practitioner Registry;
- (e) have current CPR and pediatric first aid certification; and
- (f) successfully complete required orientation training.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXV TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

- (1) Trainees must:
 - (a) have satisfactory results of background checks as set forth in [NEW RULE LXXXI];
 - (b) be at least 16 years old;
 - (c) not be left alone with children until they complete the required 30-day orientation training;
 - (d) receive oversight and guidance from an onsite lead teacher, site director, or director; and
 - (e) not remain in this role for longer than 90 days.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXVI SUPPORT STAFF QUALIFICATIONS (1) Support staff who do not provide direct care for children must:

- (a) have satisfactory results of background checks as set forth in [NEW RULE LXXXI]; and
 - (b) complete on-the-job training.
- (2) Support staff do not count toward compliance with required child-to-staff ratios.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXVII VOLUNTEER QUALIFICATIONS (1) Volunteers may include a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration, or other activity. Volunteers:

- (a) must be at least 15 years old; and
 - (b) must have satisfactory results of background checks as set forth in [NEW RULE LXXXI] if they will have unsupervised access to children.
- (2) Volunteers do not count toward compliance with required child-to-staff ratios.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXVIII ORIENTATION TRAINING (1) All staff and owners included in child-to-staff ratios must complete department-approved orientation training. Orientation training includes 30-day and 90-day training requirements.

(2) Within 30 days of hire and before providing unsupervised care to children, the following training is required:

(a) infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting. Alternatively, staff can provide verification of current infant, child, and adult CPR, infant choking response, and pediatric first aid certification from the American Heart Association, American Red Cross, or other CCL-approved entity;

(b) if the child care license or registration permits care for infants, prevention of sudden infant death syndrome and use of safe sleep practices;

(c) if the child care license or registration permits care for infants or toddlers, prevention of shaken baby syndrome and abusive head trauma.

(3) The staff and owners of licensed and registered child care facilities providing care exclusively to school-age children are not required to take infant CPR, infant choking response, sudden infant death syndrome, safe sleep, and shaken baby syndrome training.

(4) Within 90 days of hire, the following orientation training is required:

(a) prevention and control of infectious diseases, including immunization;

(b) child development;

(c) administration of medication, consistent with standards for parental/guardian consent;

(d) prevention and response to emergencies due to food and allergic reactions;

(e) building and physical premises safety;

(f) emergency preparedness and response;

(g) proper handling, storage, and disposal of hazardous materials;

(h) appropriate disposal of toxic (bio-contaminants) materials including blood, bodily fluids, and other infectious materials;

(i) transportation; and

(j) recognizing and mandatory reporting of child abuse and neglect to proper state authorities.

(5) Orientation training will be counted toward annual training requirements.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIX ANNUAL TRAINING (1) All staff and owners working more than 500 hours annually at any licensed or registered child care facility must successfully complete required annual training as defined in the Practitioner Registry.

(a) Staff and owners of licensed child care centers, and registered group and family child care facility must complete 16 hours of annual training.

(b) Staff and owners of licensed school-age care or registered FFN providers must complete eight hours of annual training.

(2) The training must be approved through the Practitioner Registry.

(3) Education and training must relate to the Montana Early Care and Education Knowledge Base.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXX HEALTH AND SAFETY REFRESHER COURSE (1) All staff required to complete orientation training, including RCE and FFN providers, must complete a department-approved health and safety refresher course at least every three years. The health and safety review course will count toward the annual training required in [NEW RULE LXXIX].

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXXI BACKGROUND CHECK DEFINITIONS (1) "May deny crime" means a crime that gives the department the ability to determine that a background check result is unsatisfactory, and an individual is not eligible to work or be present in a child care facility.

(2) "Must deny crime" means a crime that requires the department to determine that a background check result is unsatisfactory, and an individual is not eligible to work or be present in a child care facility.

(3) "Satisfactory results of background checks" means that the results do not include any conviction, pending charge, or child abuse or neglect determination from a state's child protective agency that the department has determined makes an individual ineligible to work in a child care program.

(4) "Unsatisfactory results of background checks" means that the results include a conviction, pending charge, or child abuse or neglect determination from a state's child protective agency that is a must deny or may deny crime or offense.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXII FINGERPRINT AND BACKGROUND CHECKS (1) The following individuals must provide satisfactory results of background checks prior to approval of any license or registration, or staff approval:

(a) child care directors, owners, site directors, lead teachers, teachers, substitutes, trainees, support staff, and volunteers who have unsupervised contact with children; and

(b) any adult residing in the child care facility, or other adult who regularly or frequently stays in the facility, unless care is being provided in the home of a child or children who belong to the same sibling group.

(i) In the case of a FFN provider caring for children from more than one sibling group in a child's home, all adults residing in the home must have satisfactory results of a background check.

(2) The following background checks are required prior to working in a child care facility and annually thereafter, with the exception of national background checks, which are required every five years:

(a) a fingerprint background check by the Montana Department of Justice (DOJ) and Federal Bureau of Investigation; and

(b) the national Sexual Offender Registry from the National Criminal Information Center (NCIC);

(i) fingerprints must be processed by a trained individual within a certified fingerprinting agency. Results will be transmitted electronically to the department by DOJ;

(c) a check of the Montana Sex Offender Registry;

(d) a child protective services check for Montana and any state where the individual has resided in the preceding five years; and

(e) a name-based criminal records check for Montana and any state where the individual has resided in the preceding five years.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE LXXXIII BACKGROUND CHECK RESULTS THAT MUST RESULT IN THE DENIAL OF AN APPLICANT

(1) After written notice to the applicant, licensee, or registration holder, the department must deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a license or registration upon finding that any person who is required to have a background check has been convicted of a crime that must make an individual ineligible to work in a child care facility. These crimes are felonies and misdemeanors that are direct crimes against a person's physical or emotional well-being. Convictions for the following crimes make an individual ineligible to work or be present in a child care facility:

(a) a serious crime, such as homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, robbery, or arson; or

(b) a crime pertaining to children or families, including child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXIV BACKGROUND CHECK RESULTS THAT MAY RESULT IN THE DENIAL OF AN APPLICANT

(1) After written notice to the applicant, licensee, or registered provider, the department may deny, suspend,

restrict, revoke, or reduce to a provisional or probationary status a license or registration upon finding that any person who is required to have a background check has been convicted of a crime that may make an individual ineligible to work in a child care facility. These are direct crimes against a person's physical or emotional well-being. Conviction or determination of the following may make an individual ineligible to work or be present in a child care facility:

(a) a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, prostitution, burglary, or a crime involving an abuse of the public trust;

(b) being named as a perpetrator in a substantiated report of abuse or neglect;

(c) being named as a perpetrator in a founded report of abuse or neglect, although this cannot be the sole basis for denial;

(d) abuse, neglect, or exploitation of an elderly person or a person with a developmental disability; or

(e) a felony conviction for a drug-related offense within the previous five years, including distribution or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXV OFFENSES AND INVESTIGATIONS THAT ARE PENDING RESOLUTION (1) Any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime that will potentially make them ineligible to work in a child care facility must not provide care or be present in the facility when children in care are on the premises, pending the resolution of the charges.

(a) Child care providers must notify the CCL program within 48 hours if any charges are filed against any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, that will potentially make them ineligible to work in a child care facility.

(2) Any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, who is subject to an investigation by CFSD may be ineligible to be present in the child care facility when children in care are on the premises.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXXVI PROCESS TO REQUEST ADMINISTRATIVE RECONSIDERATION OF BACKGROUND CHECK RESULTS AND DEPARTMENT

DETERMINATION (1) If an unsatisfactory background check occurs based upon a conviction or determination identified in [NEW RULE LXXXIII], [NEW RULE LXXXIV] or [NEW RULE LXXXV] the staff applicant in conjunction with the license or registration holder, if different, may submit additional information to correct any inaccuracies or errors in the background check results.

(2) The staff applicant, in conjunction with the license or registration holder, if different, may request an administrative reconsideration of a denial based on a may-deny background check finding. The requester and license or registration holder must establish that the person has been sufficiently rehabilitated to warrant the public trust and not pose a risk to children.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXVII COMPLAINTS AND INVESTIGATIONS (1) Any individual, group, or other agency may submit a written complaint against a child care facility or provider. The complainant's personal information is not public information.

(2) Any individual, group, or other agency may request that the department determine whether a child care facility should be licensed or registered according to law. Referral may be either in writing or by telephone.

(3) An authorized representative of the department may conduct an on-site visit of a facility and property without prior notice to the owner or staff of the program whenever the department considers it necessary and when children are in care.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE LXXXVIII LICENSING OR REGISTRATION CORRECTIVE ACTION (1) At the department's discretion, when a program is not in compliance with this chapter or Title 52, chapter 2, part 7, MCA, a corrective action plan may be required.

(2) The department will apply progressive corrective actions in plans based on:

(a) the scope and severity of non-compliance;
(b) the potential threat or actual harm to the health, safety, and well-being of the children in care;

(c) the number of times the licensee or registration holder has not complied with rules in this chapter or under Title 52, chapter 2, part 7, MCA; and

(d) mitigating and aggravating factors.

(3) The department's corrective action plan includes:

(a) a description of non-compliance and the rule or law that was violated;

(b) the date by which the finding of non-compliance must be corrected; and

(c) information about other licensing or registration actions that may be imposed if compliance does not occur by the required date.

(4) The provider must submit a response within ten business days of receiving the corrective action plan, including a statement from the provider regarding the proposed plan to comply with the rule or law.

(5) The provider may submit additional information as to why the provider believes non-compliance did not occur.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, MCA

NEW RULE LXXXIX TIME PERIOD FOR CORRECTING NON-COMPLIANCE (1) The length of time a licensee or registered provider has to make corrections will be determined by the department, which must consider:

- (a) the scope and severity of non-compliance;
- (b) the potential threat or actual harm to the health, safety, and well-being of the children in care;
- (c) the number of times the licensee or registration holder has not complied with rules in this chapter or under Title 52, chapter 2, part 7, MCA; and
- (d) mitigating and aggravating factors.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XC DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OF A LICENSE OR REGISTRATION (1) The department, after written notice to the applicant or provider may deny, suspend, revoke, or modify a license or registration.

(2) The department may modify a license or registration by restricting or reducing it to a provisional or probationary status.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCI VIOLATIONS THAT MAY RESULT IN NEGATIVE LICENSING OR REGISTRATION ACTION (1) The department may deny, suspend, or revoke a license or registration, or take another action such as requiring an individual be excluded from a facility, when:

- (a) the provider, any staff member, support staff, trainee, volunteer, or any person residing or staying in the child care facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;
- (b) the licensee/registered provider, staff member, support staff, trainee, volunteer, or any person residing or staying in the child care facility on a frequent or regular basis is disqualified under the child care licensing background check rules;
- (c) the department requests and is denied access to the licensed or registered facility;
- (d) the child care program has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;

(e) the program has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the provider is obligated to disclose to the department, regarding any aspect of the child care facility or its operations;

(f) through a CCL investigation, it is determined that the owner/director, staff member, trainee, support staff, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a CCL regulation that has resulted in child abuse or neglect pursuant to 41-3-102, MCA, whether or not a criminal prosecution is initiated or that person was prosecuted or convicted of child abuse or neglect;

(g) upon referral of suspected child abuse or neglect regarding an operating child care facility, the initial investigation by the department or law enforcement determines that there is probable cause to believe that a child in the facility may be in danger of harm;

(h) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(i) the provider or any staff member, trainee, support staff, volunteer, or adult residing in the facility or staying in the facility may pose any risk or threat to the safety or welfare of a child in the child care program;

(j) the child care provider has failed to protect the health, welfare, or safety of a child, or the child care facility presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child; or

(k) the licensee's or registered provider's child is removed from the licensee or registered provider by the Child and Family Services Division.

(2) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCII NOTICE OF LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION

(1) The department must provide written notification to a licensee, registered provider, or applicant of a denial, suspension, or revocation.

(2) The licensee, registered provider, or applicant has the right to request an administrative hearing regarding the denial, suspension, revocation, or modification of a license or registration. The department notice will include information on hearing rights and how to request a hearing.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, MCA

NEW RULE XCIII ISSUING A PROBATIONARY LICENSE OR REGISTRATION

(1) When the department issues a probationary license or registration, the licensee, registered provider, or owner must:

- (a) provide the parents and guardians of enrolled children notice of the probationary license or registration in a department-approved format within five working days of the licensee, registered provider, or owner receiving the probationary license or registration;
- (b) provide documentation to the department that parents or guardians of enrolled children have been notified within seven working days of the licensee, registered provider, or owner receiving the probationary license or registration;
- (c) inform parents or guardians of probationary status before enrolling new children; and
- (d) post documentation of the probationary license or registration.

AUTH: 52-2-704, 52-2-741, MCA
IMP: 52-2-741, MCA

NEW RULE XCIV PROVIDING UNLICENSED OR UNREGISTERED CARE

- (1) If the department determines a person is providing unlicensed or unregistered care when a license or registration is required, the department will send a notice including:
 - (a) the department's basis for determining unlicensed or unregistered child care is being provided when a license or registration is required;
 - (b) how to respond to the department;
 - (c) the law that requires child care to be licensed or registered;
 - (d) that unlicensed or unregistered child care must stop being provided;
 - (e) the consequences of providing unlicensed or unregistered care and the penalties that may be imposed; and
 - (f) how to apply for a license or registration and the benefits of licensure or registration.
- (2) If the department finds that a facility is providing unlicensed or unregistered care when a license or registration is required, it will take steps pursuant to 52-2-741, MCA.

AUTH: 52-2-704, 52-2-741, MCA
IMP: 52-2-741, MCA

NEW RULE XCV REAPPLICATION AFTER DENIAL, SUSPENSION, OR REVOCATION

- (1) Applicants who have been denied due to an incomplete application may reapply for a license or registration immediately.
- (2) Individuals or legal entities that have had a child care license or registration suspended may not reapply for licensure or registration within one year of the suspension.
- (3) If the suspension is contested and upheld after an administrative hearing, the reapplication may not be made until one year after the date of the final agency decision.
- (4) Individuals or legal entities that have had a child care license or registration revoked are permanently ineligible for licensure, registration, or a staff position at a child care facility.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE XCVI FAIR HEARING (1) An applicant, licensee, or registered provider who is subject to a negative licensing action is entitled to a fair hearing in accordance with ARM 37.5.103.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

4. The department proposes to repeal the following rules:

37.95.102 DEFINITIONS

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

37.95.103 FAMILY, FRIEND, AND NEIGHBOR (FFN) PROVIDERS: REQUIREMENTS AND PROCEDURES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

37.95.104 DETERMINATION OF NEED FOR LICENSE OR REGISTRATION: COUNTING PROVIDER'S OWN CHILDREN

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, MCA

37.95.105 DETERMINATION OF NUMBER OF CHILDREN UNDER CARE: COUNTING PROVIDER'S AND OTHER CHILDREN

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, MCA

37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.108 CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

37.95.110 RELATIVE CARE EXEMPT (RCE) PROVIDERS:
REQUIREMENTS AND PROCEDURES

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.115 DAY CARE PARENT INFORMATION

AUTH: 52-2-704, MCA

IMP: 52-2-723, 52-2-731, 52-2-735, MCA

37.95.117 CHILD CARE FACILITIES, JOINT PROGRAMS

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.121 CHILD CARE FACILITIES: SAFETY REQUIREMENTS

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 52-2-735, MCA

37.95.124 CHILD CARE FACILITIES: EMERGENCY DISASTER AND
ACTION PLANS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

37.95.126 DAY CARE FACILITIES, SMOKE-FREE ENVIRONMENT

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-731, MCA

37.95.127 CHILD CARE FACILITIES: SWIMMING

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-735, MCA

37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH
RISKS FOR CHILDREN UNDER AGE TWO

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.132 TRANSPORTATION

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, MCA

37.95.139 CHILD CARE FACILITIES: HEALTH CARE REQUIREMENTS

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

37.95.140 IMMUNIZATION

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

37.95.141 CHILD CARE FACILITIES: RECORDS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-731, 52-2-732, 52-2-736, MCA

37.95.146 DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.149 DAY CARE FACILITIES: LICENSE FOR EACH PREMISES

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, MCA

37.95.153 DAY CARE FACILITIES: NOTICE OF CHANGES

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.154 DAY CARE FACILITIES: COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-732, 52-2-733, MCA

37.95.155 DAY CARE FACILITIES: RECORDS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-732, MCA

37.95.156 DAY CARE CENTERS: CONFIDENTIALITY REQUIREMENTS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, MCA

37.95.160 CHILD CARE FACILITIES: STAFF RECORDS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-732, MCA

37.95.161 CHILD CARE FACILITIES: FINGERPRINT AND BACKGROUND CHECK REQUIREMENTS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.162 CHILD CARE FACILITIES: REQUIRED ANNUAL TRAINING

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.163 CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.165 DAY CARE FACILITIES: NOTICE OF CURRENT ADDRESS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.168 DAY CARE FACILITIES: REQUIRING EXAMINATIONS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.169 IDENTIFYING AND PREVENTING SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.171 DAY CARE FACILITIES: MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT

AUTH: 52-2-704, MCA

IMP: 41-3-102, 52-2-704, MCA

37.95.172 CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.173 CHILD CARE FACILITIES: PROTECTION OF CHILDREN FROM
A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR
DRUGS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.175 DAY CARE FACILITIES: REAPPLICATION AFTER
SUSPENSION OF REVOCATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.176 DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

37.95.181 DAY CARE FACILITIES: MEDICATION ADMINISTRATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, 52-2-736, MCA

37.95.182 DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF
MEDICATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-732, MCA

37.95.183 CHILD CARE FACILITIES: FIRST AID REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.184 CHILD CARE FACILITIES: HEALTH HABITS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.205 SOLID WASTE

AUTH: 52-2-735, 53-4-406, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.206 LAUNDRY

AUTH: 52-2-735, 53-4-506, MCA

IMP: 52-2-735, 53-4-506, MCA

37.95.207 GENERAL HOUSEKEEPING

AUTH: 52-2-735, 53-4-506, MCA

IMP: 52-2-735, 53-4-506, MCA

37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING
CRIBS OR DIAPERS

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

37.95.214 FOOD PREPARATION AND HANDLING

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA

IMP: 52-2-704, 52-2-735, 53-4-506, MCA

37.95.215 NUTRITION

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-506, MCA

37.95.225 WATER SUPPLY SYSTEM

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-506, MCA

37.95.226 SEWAGE SYSTEM

AUTH: 52-2-735, 53-4-506, MCA

IMP: 52-2-735, 53-4-506, MCA

37.95.227 SWIMMING POOLS

AUTH: 52-2-735, 53-4-506, MCA

IMP: 52-2-735, 53-4-506, MCA

37.95.602 CHILD CARE CENTERS, PROGRAM REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.606 CHILD CARE CENTERS, GUIDANCE AND DISCIPLINE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.610 DAY CARE CENTERS, SPACE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.619 DAY CARE CENTERS, NIGHT CARE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.623 CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

37.95.624 CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.640 DAY CARE CENTERS, LICENSING SERVICES PROVIDED

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-733, MCA

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY CHILD CARE FACILITIES: DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.704 GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.705 GROUP AND FAMILY CHILD CARE FACILITIES: BUILDING REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.706 GROUP AND FAMILY CHILD CARE FACILITIES: FIRE SAFETY REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.708 GROUP AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS

AUTH: 52-2-704, 52-2-735, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-504, MCA

37.95.711 GROUP AND FAMILY DAY CARE FACILITY NUTRITION

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.715 GROUP AND FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-731, 53-4-504, MCA

37.95.718 GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP

AUTH: 52-2-731, 52-2-735, MCA
IMP: 52-2-723, 52-2-731, 52-2-735, MCA

37.95.720 GROUP AND FAMILY DAY CARE HOMES, EQUIPMENT

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-731, 53-4-504, MCA

37.95.730 GROUP CHILD CARE AND FAMILY CHILD CARE FACILITIES:
REGISTRATION SERVICES PROVIDED

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-733, MCA

37.95.1001 INFANT'S AND TODDLER'S DIAPERING AND TOILET
TRAINING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1002 INFANT'S AND TODDLER'S WET OR SOILED CLOTHING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1003 INFANT'S AND TODDLER'S FEEDING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1004 INFANT'S AND TODDLER'S, BATHING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1005 INFANT AND TODDLER, SLEEPING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1011 INFANT'S AND TODDLER'S, ACTIVITIES

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1015 INFANT'S AND TODDLER'S, OUTDOOR ACTIVITIES

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-736, MCA

37.95.1016 INFANT'S AND TODDLER'S, EQUIPMENT

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1021 INFANT'S AND TODDLER'S, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1101 DEFINITIONS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, MCA

37.95.1105 APPLICANT REQUIREMENTS FOR DROP-IN DAY CARE CENTERS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

37.95.1110 DROP-IN DAY CARE CENTER PLAN OF OPERATION

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-724, 52-2-731, MCA

37.95.1120 DROP-IN DAY CARE CENTER SPACE REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

37.95.1130 EMERGENCY CARDS AND HEALTH HISTORY FORMS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

37.95.1140 EMERGENCY SAFETY REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, 52-2-734, MCA

37.95.1150 MATERIALS AND EQUIPMENT

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

37.95.1160 FOOD SERVICE

AUTH: 52-2-704, MCA
IMP: 52-2-702, MCA

37.95.1170 STAFFING QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

37.95.1180 CARE OF INFANTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to repeal the entirety of ARM Title 37, chapter 95, and create an updated, restructured child care licensing and registration framework under a new chapter. In accordance with the Gianforte administration's commitment to expanding access to quality and affordable child care for Montana families, the department intends for these changes to remove unnecessary regulatory barriers for licensed and registered child care providers in Montana, while maintaining requirements necessary to ensure the safety and well-being of children in care.

The current organization of child care licensing regulations is unclear and hard to navigate, with some rules organized by license or registration type and others by topic area, resulting in duplication and inconsistency throughout the chapter. The proposed new rules are organized by topic with subchapters focused on general requirements, program activities, administrative requirements, safety and facilities, medical health, environmental health, nutrition and food service, immunizations, staff qualifications and training, background checks, and enforcement. Requirements specific to each license or registration type are specified within each rule. This reorganized approach allows readers to see applicable content in one part of the rules, versus having to navigate to disparate rules located throughout the child care licensing chapter.

The proposed rule repeals and restructuring will decrease barriers and increase capacity for quality and affordable child care, address stakeholder requests for increased clarity and consistency, meet the guidelines of Governor Gianforte's Red Tape Relief/Regulatory Reform Initiative (RRI), and implement or be consistent with legislation passed during the 2021 and 2023 sessions of the Montana Legislature.

Throughout these proposed rules, the department also carefully balanced its obligations to ensure the health and safety of children in care with the elimination of unnecessary regulatory burdens.

The department conducted a comprehensive needs assessment to determine how it could make child care licensing and registration work better for child care providers and families. From September 2021 through April 2022, the department received feedback from over 700 families, child care providers and their staff, state and local agency partners, local business leaders, and other interested parties about the challenges of providing child care and the opportunities to decrease barriers and increase capacity for licensed and registered child care.

- 319 licensed and registered child care providers responded to a survey, which represents 25% of all licensed and registered child care providers in the state.
- Focus groups were conducted with 78 currently or formerly licensed or registered child care providers.
- 18 individuals who provided child care, but were not licensed or registered, responded to a survey. Most provided care in preschools, for school-age children, or for a small number of children in their home (fewer than four).
- 120 families with children aged 11 years or younger responded to a survey. 75% of the families with children aged 0-5 and 50% of the families with children aged 6-11 used licensed or registered child care.

Families who responded to the survey overwhelmingly identified cost, safety, convenience, and quality as their top priorities when looking for child care. The majority of families and providers did not rank child care licensing and registration regulations as one of the top three barriers to improving child care capacity and access. However, nearly one-third of providers did rank child care licensing and registration regulations as the first or second most important barrier limiting capacity. These findings suggest the need to review and revise child care licensing and registration rules with the goal of reducing unnecessary burdens of time and cost for providers, thereby bringing down the cost of care for families, while maintaining a core commitment to safety and quality for Montana's children. Individuals providing child care who are not currently licensed or registered expressed interest in licensing and registration if the requirements could be made more feasible and appropriate to the type of care they are providing.

The information learned through this process informed the streamlining and updating of regulations proposed in this rule change package. After engaging many families and providers through surveys and focus groups, the department undertook a detailed process that included job-shadowing and site visits to identify gaps in the current application of child care licensing and registration rules; detailed rule review meetings with the department and other agencies (fire, environmental health, infectious disease), and worked with a group of school-age care providers to ensure

that the rule review process supported diverse options for licensed and registered child care.

This process led to the proposed reorganization of child care licensing and registration rules to be by topic rather than provider type and a reduction by almost 20% in the word count of the child care licensing and registration rule chapter. These revisions were undertaken to make the child care licensing and registration rules easier to understand for providers and families.

The process also led to the creation of a new type of child care license, for out-of-school time providers, with decreased requirements that align with the needs of school-age children. Making it easier for out-of-school-time providers to become licensed will increase the number of families that can utilize child care subsidies for school-age children. This will support the Montana workforce and business community by ensuring that employees have the child care they need for their school-age children to receive care during working hours.

In summary, the proposed rule repeals and restructuring are largely informed by feedback from relevant stakeholders and other interested parties.

Additionally, the department reviewed and applied the RRI criteria to each existing rule, evaluating if each rule serves a legitimate purpose, is not redundant, creates the lowest burden possible to meet the need, and is clear in language and intent.

Overall Structure

In the proposed rules, the department proposes a wholesale reorganization of the child care licensing and registration regulations in ARM Title 37, chapter 95. The department recognizes that the current organization by provider type has created confusion and duplication. To remedy this, the proposed rules will be reorganized by topic and will clarify, within each new rule, the applicability of the rule to each type of providers or facilities. Separately, the department would provide, online, companion documentation for each provider type to ensure that there is an easy way for each provider type to understand the rules that apply to them. The proposed rule subchapters are:

1. General
2. Program Activities
3. Administrative
4. Safety and Facilities
5. Medical Health
6. Environmental Health
7. Nutrition and Food Service
8. Immunizations
9. Staff Qualifications and Training
10. Background Checks
11. Enforcement

Under each of these subchapter readings below, the department will discuss the rules being repealed, the new rules being established (and how they are derived from current child care licensing and/or registration requirements), and the reasons for any changes made in the wording or the requirements in the new proposed rules.

General

Rules Repealed

The department proposes to repeal ARM 37.95.104, 37.95.128, and 37.95.168.

- The content from ARM 37.95.104 has been simplified and streamlined in proposed NEW RULE III.
 - ARM 37.95.104 describes how a child care provider's own children are included in counting to determine the license or registration type and capacity.
 - NEW RULE III incorporates the details of ARM 37.95.104 into a single rule about how to count children for the purposes of determining a license type.
- Parts of ARM 37.95.128 have been eliminated and other parts, which are contained in current ARM 37.95.141, are included in proposed NEW RULE XXIV.
 - Parts of ARM 37.95.128 require documentation of special health risks for children under the age of two. This current rule creates unnecessary administrative burden for families and providers. The elimination of this rule will result in less required paperwork before a child may be enrolled in child care, and less paperwork that providers will have to store and maintain after enrollment.
 - Proposed NEW RULE XXIV includes the standard medical form currently required by ARM 37.95.141, which is sufficient to ensure the health and safety of children under the age of two.
- All of ARM 37.95.168 has been eliminated.
 - Current ARM 37.95.168 gives the department the right to require a physical, psychological, or other health evaluation if deemed necessary. The rule as is creates the potential for inappropriate intrusions into the private medical information of child care staff by the department.

The department proposes to repeal ARM, 37.95.102, 37.95.103, 37.95.105, 37.95.106, 37.95.108, 37.95.110, 37.95.114, 37.95.121, 37.95.146, 37.95.149, 37.95.172, 37.95.623, 37.95.640, 37.95.718, 37.95.730, and 37.95.1105.

NEW RULE I GENERAL DEFINITIONS

The department proposes to adopt a new general definitions regulation that is substantially similar to current ARM 37.95.102. The department intends this new rule would help ensure clarity throughout the entire chapter, reflect additional topical

areas, and increase readability and useability. To ease readability and understanding, the department also proposes moving some of the definitions currently in ARM 37.95.102 to the beginnings of the new, proposed subchapters when the terms relate exclusively to the topic of that subchapter.

To offer greater clarity, the following additional terms would be defined in this proposed rule: applicant, capacity, child, child care, continuous, department, license, licensee, owner, or registered provider, negative action, parent or guardian, pre-inspection, premises, regular basis, relative care exempt provider, school-age care, school-age child, and technical assistance.

The department intends this new structure to be more user-friendly by providing one location for general, commonly used definitions, as well as discrete, topic-specific definitions.

NEW RULE II TYPES OF LICENSES AND REGISTRATION

The proposed rule would combine and condense provisions from ARM 37.95.103, 37.95.108, 37.95.110, and 37.95.1105. This proposed rule is intended to provide a clear understanding about the types of child care programs that exist in Montana. This includes increased clarity regarding what types of programs are required to be licensed, have the option to be licensed, are required to be registered, or have the option to be registered. The intent of this proposed rule is to improve understanding among providers and families about the options and requirements for a child care license or registration. This would help new child care programs decide what kind of licensure or registration may be required for their business given their business plan; help current providers know what is expected of them to maintain licensure or registration; and help parents make informed decisions about what child care program is the best fit for their children.

NEW RULE III DETERMINING FACILITY TYPE AND COUNTING CHILDREN ON LICENSE OR REGISTRATION

The department proposes to combine and condense ARM 37.95.104 and 37.95.105, to streamline the requirements on how children are counted when determining the type of license or registration, if any, for which a provider should apply. The proposed new rule reflects changes necessitated by the passage of House Bill 556 (HB 556) during the 2023 Legislative Session. HB 556 generally revised laws related to persons providing care to permit six or fewer children in a private residence without the requirement of a child care registration. For these providers, HB 556 removed the registration requirement if the providers do not receive child care subsidy payments administered by the department. NEW RULE III updates the number of children who can be cared for without a required registration to align with HB 556. The proposed rule also contains new language that would clarify how a provider's own children are counted when determining the number of children in care, which dictates the type of license or registration that may be applicable to the facility.

NEW RULE IV CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION

The department proposes to combine and condense ARM 37.95.103, 37.95.106, 37.95.172, 37.95.623, 37.95.702, and 37.95.718, all related to the child-to-staff ratios, ages of children in care, program type, and the timing of child care provided. The proposed new rule aligns with House Bill 422 (HB 422) from the 2023 Legislative Session, which increased the number of children who can be supervised by a single staff member (the child-to-staff ratio). HB 422 increases ratios depending on the age of the children, and allows ratios to be doubled during nap time. HB 422 includes higher ratios and larger group sizes for older children in child care centers and in school-age care facilities. These proposed increases in the child-to staff-ratios are warranted because older children require less assistance with basic tasks and can better understand rules related to safety than can younger children. The proposed rule would simplify the explanation of family and group child care program staff requirements, including for overlap care.

NEW RULE V LICENSE OR REGISTRATION APPLICATION

The department proposes to include some provisions from ARM 37.95.106 in the proposed rule. This proposed rule would make information about how to apply for a child care license or registration very clear and easy to find.

NEW RULE VI RCE AND FFN APPLICATION REQUIREMENTS

The proposed rule would combine content from ARM 37.95.103 and 37.95.110. The proposed rule would provide a clear, concise explanation of the requirements for prospective Relative Care Exempt (RCE) and Family, Friend, and Neighbor (FFN) providers to become registered child care providers.

NEW RULE VII ISSUING A LICENSE OR REGISTRATION

The proposed rule would combine some provisions from ARM 37.95.108 with additional detail to provide a clear step-by-step process on how a child care license or registration is issued. This proposed rule would better notify applicants of the department's licensing and registration processes and its obligations to applicants.

This proposed rule also incorporates the statutory changes made pursuant to House Bill 336 (HB 336), which was passed during the 2023 Legislative Session. HB 336 requires the department to recognize a child care facility that has been licensed by any branch of the United States armed forces and therefore not require a separate state license or registration.

NEW RULE VIII RENEWING A LICENSE OR REGISTRATION

This proposed rule would clarify content from ARM 37.95.106, to provide clear information on license and registration renewal in a logical place—after the proposed rule on issuance of a new license or registration. The proposed rule would require renewal applications to be submitted 60 days before the current license or registration expires to allow sufficient time for the renewal application to be processed. The proposed rule would also ensure providers retain a full license or

registration to allow for continuity of services if there are delays in processing the renewal application.

NEW RULE IX LICENSE OR REGISTRATION APPLICATION DENIAL

This proposed rule would clarify content from ARM 37.95.103 and provide straightforward information in one rule on why certain new or renewal applications must be denied, to promote clarity and understanding.

NEW RULE X TECHNICAL ASSISTANCE

The department proposes to combine content from ARM 37.95.640 and 37.95.730, to centrally highlight the department's responsibilities to provide licensing and registration support to providers.

NEW RULE XI LICENSE OR REGISTRATION ASSIGNMENT

This proposed rule would combine content from ARM 37.95.146 and 37.95.149, to provide concise, condensed language on license and registration assignment and the need for a license or registration for each facility maintained on separate premises.

NEW RULE XII FACILITIES INSPECTIONS

This proposed rule would update content from ARM 37.95.103, 37.95.108, 37.95.640, and 37.95.730, to provide one rule about department inspections of licensed child care programs and registered FFN programs. The proposed rule clarifies that inspections can only occur during child care business hours. In addition to promoting clarity, these proposed changes are necessary to balance the department's responsibility to ensure child care programs are safe with provider privacy, especially those who provide child care in their homes. The department proposes this change in response to feedback that home-based facilities thought the current rule was unclear and allowed the department to inspect homes at any time, day or night. Importantly, the proposed rule clarifies that RCE providers and applicants are not subject to any annual inspection or pre-inspection requirements.

NEW RULE XIII REQUIREMENTS FOR FACILITIES OPERATING WITH JOINT PROGRAMS

This proposed rule uses content from ARM 37.95.117, and would clarify how a child care facility can be located in a building, including a multi-family structure, with another program not related to the child care program.

NEW RULE XIV WAIVERS AND PILOT PROJECTS

This proposed rule includes requirements from ARM 37.95.106, regarding waivers, and clarifies that the department and its partner agencies, e.g., local public health departments, can grant waivers to any child care licensing rule if the health and safety of children can be ensured. The proposed rule would also add a new option for providers to develop pilot projects under a provisional license to test new, innovative approaches to child care delivery. These proposed changes provide needed regulatory flexibility to pilot projects while still providing for the safety and well-being of children attending these programs.

Programming

The department proposes to repeal ARM 37.95.106, 37.95.169, 37.95.602, 37.95.606, 37.95.613, 37.95.619, 37.95.715, 37.95.718, 37.95.720, 37.95.1011, 37.95.1015, 37.95.1021, 37.95.1110, 37.95.1150, and 37.95.1180.

NEW RULE XV PROGRAMMING DEFINITIONS

The department proposes to add content-specific programming definitions: guidance approach, positive child guidance, programming, punishment, and screen time. These proposed organizational and substantive changes would increase useability of the rules by providing clear definitions of the terms used in the proposed rules on child care programming.

NEW RULE XVI GENERAL PROGRAMMING REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.106, 37.95.602, 37.95.613, 37.95.715, 37.95.720, 37.95.1110, and 37.95.1150, focusing on requirements related to daily activities, equipment, and materials to support child development. The proposed rule would remove some of the specificity of current ARM 37.95.715 and add separate requirements for the newly created category of school-age child care programs. This would provide guidance on programming that is age-appropriate and allow for flexibility to align with provider preferences while maintaining quality for children in care. The proposed rule would maintain, but streamline, core requirements that ensure child development and safety.

NEW RULE XVII INFANT AND TODDLER ACTIVITIES

The department proposes to combine and condense content from ARM 37.95.103, 37.95.1011, 37.95.1015, and 37.95.1180 that relate to activity and programming requirements for infants and toddlers. The proposed rule would remove unnecessary requirements to reduce burden and increase flexibility for providers. Bringing these requirements into a single rule would make it easier for providers and families to identify requirements for the youngest children in care. The proposed rule would maintain, but streamline, core requirements that ensure child development and safety.

NEW RULE XVIII POSITIVE CHILD GUIDANCE

The department proposes to combine and condense content from ARM 37.95.169, 37.95.606, 37.95.715, and 37.95.1110 on child guidance and discipline. The proposed rule would use the language and description of positive child guidance, which is an updated term for positive discipline, and maintain prohibitions against abusive physical or emotional punishment. This would give providers more clarity on best practices associated with positive child guidance and would give parents assurance that no abusive punishment will be used.

Administrative

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.115, 37.95.121, 37.95.124, 37.95.139, 37.95.140, 37.95.153, 37.95.155, 37.95.156, 37.95.160, 37.95.165, 37.95.169, 37.95.171, 37.95.183, 37.95.184, 37.95.613, 37.95.622, 37.95.702, 37.95.703, 37.95.704, 37.95.708, 37.95.711, 37.95.1110, 37.95.1130, and 37.95.1140.

NEW RULE XIX ADMINISTRATIVE DEFINITIONS

The department proposes to add a definitions rule specific to terms used in the proposed rules on administrative requirements: abusive head trauma, expulsion or expel, shaken baby syndrome, suspension, and volunteer. This change would increase readability and useability of the new subchapter by providing providers, staff, and families with clear definitions of the terms used in the administrative rules, collected in one place.

NEW RULE XX EMERGENCY COMMUNICATION

The department proposes to combine content from ARM 37.95.103, 37.95.121, 37.95.183, 37.95.613, 37.95.708, and 37.95.1140, related to emergency communication. The proposed rule would collapse duplicative content from each of the current rules into one rule. This would make it easier for providers to immediately identify the requirements associated with emergency communication.

NEW RULE XXI POLICY REQUIREMENTS

The department proposes to combine content from ARM 37.95.103, 37.95.124, 37.95.139, 37.95.155, 37.95.169, 37.95.171, 37.95.183, and 37.95.1140, on the policies that each type of provider is required to maintain. The proposed rule would collapse duplicative content from each of the current rules, without change, into one rule. It would also clarify a smaller set of policy requirements specific to licensed school-age care facilities and registered FFN providers. This would offer clarity to providers to ensure all necessary policies, depending on provider type, have been developed and implemented, and provide families with a clear and concise list of policies they should expect a licensed or registered child care provider to have. Importantly, it clarifies that school-age care and FFN providers must have only a limited number of policies. The proposed rule would maintain, but streamline, core policy requirements that ensure health and safety of children in care.

NEW RULE XXII RECORD RETENTION

The department proposes to repeal ARM 37.95.155 and replace it with NEW RULE XXII to clarify how long, and in what format, providers are required to maintain records. The proposed rule would add the option for electronic files/records and make clear that department representatives only have the authority to request access to records during regular business hours. This would give providers more flexibility in how they maintain records and decrease the burden that comes from uncertainty about record retention formats and the duration of their record retention obligation. It would also make clear that the department cannot make records requests at unreasonable times.

NEW RULE XXIII PROGRAM RECORDS

The department proposes to combine content from ARM 37.95.106, 37.95.141, 37.95.702, 37.95.711, and 37.95.1110, related to recordkeeping about the program and facility. The proposed rule would add detail to clarify which records are required of all licensed and registered providers, which are required only of licensed providers, and which are required only of providers with 16 or more children receiving care. This would give providers a clear checklist of records they are required to keep and will decrease the burden associated with determining the applicable requirements and maintaining the required records. The proposed rule would retain, but streamline, core required records that ensure the health and safety of children in care and the safety of the facility.

NEW RULE XXIV CHILDREN'S RECORDS

The department proposes to combine and condense content from ARM 37.95.139, 37.95.141, 37.95.156, 37.95.184, 37.95.702, 37.95.703, and 37.95.1130, on recordkeeping about children in care. This would collapse duplicative content from each of the current rules into one rule. It would also integrate records related to safe sleep into general recordkeeping. This proposal would give providers a clear checklist of records they are required to keep and decrease the burden on providers and families of having to complete more paperwork or at a higher frequency than is necessary. The proposed rule would maintain, but streamline, core required records that ensure the health and safety of the children in care.

NEW RULE XXV STAFF RECORDS

The department proposes to combine and condense content from ARM 37.95.106, 37.95.160, 37.95.169, 37.95.184, 37.95.1005, and 37.95.1110, on record keeping about staff training and responsibilities. The proposed rule would remove requirements for records related to health statements and immunizations, as the department proposes to eliminate these requirements. This would decrease the burden on staff and providers to ensure that staff meet all requirements and streamline staff requirements by aligning child care staff requirements with staff requirements applicable in public school settings. Based on feedback from the assessment of child care providers and their staff, the department believes that streamlining staff record requirements would decrease the burden on child care programs to obtain and maintain such records, and on new staff hires to provide detailed and personal information to the child care programs. The department believes that this may increase interest in child care staff positions, support provider recruitment and retention efforts, and ultimately increase the overall labor pool for child care.

NEW RULE XXVI FAMILY ACCESS TO INFORMATION

The department proposes to combine and condense content from ARM 37.95.103, 37.95.115, 37.95.141, and 37.95.183, on how families can access program and child-specific information, as well as information about the facility itself. The proposed rule would clarify which information is required to be made available to parents and at what times. This would give providers and parents a clear and shared understanding related to communication. Providing parents with the child

care program's policies on the listed topics prior to enrollment would help them make informed decisions in choosing a child care program.

NEW RULE XXVII NOTIFICATIONS TO THE DEPARTMENT

The department proposes to combine and condense ARM 37.95.103, 37.95.153, 37.95.165, 37.95.171, and 37.95.183, related to situations in which the department must be contacted by the provider. The proposed rule would clarify the regulatory language and combine content that is identical across several current rules. This would give providers a clear and simple list of reporting requirements, decreasing uncertainty and unnecessary reporting and/or paperwork.

Safety and Facilities

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.121, 37.95.124, 37.95.127, 37.95.132, 37.95.205, 37.95.207, 37.95.210, 37.95.610, 37.95.611, 37.95.613, 37.95.705, 37.95.706, 37.95.718, 37.95.720, 37.95.1005, 37.95.1015, 37.95.1016, 37.95.1021, 37.95.1105, 37.95.1110, 37.95.1120, 37.95.1140, and 37.95.1180.

NEW RULE XXVIII SAFETY AND FACILITIES DEFINITIONS

The department proposes to add content-specific definitions, so that the grouping of proposed rules on safety and facilities would have definitions of terms that are specific to these topics: bodies of water, crib, exit, firm sleep surface, means of egress, sauna, spa, and transportation. This would increase the readability and useability of the rules by giving providers, staff, and families clear definitions regarding safety and facilities issues.

NEW RULE XXIX HAZARDS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.207, 37.95.705, and 37.95.1110, related to minimizing safety hazards in and around child care facilities. The proposed rule would collapse content that is identical across several current rules into one rule. The proposed changes would clarify that safety standards as they relate to firearms specifically are applicable during child care business hours, and add guidelines for guardrails on tall platforms (decks, stairs). This reorganization would give providers a single location to assess whether their facility has any hazard concerns, which may reduce the burden of uncertainty around specific safety requirements. The proposed rule would maintain, but streamline, safety standards for children in care.

The proposed rule language related to keeping the building and grounds reasonably free of insects, rodents, and other vermin and reasonably neat and free from the accumulation of dirt, rubbish, or other health and safety hazards is related to the child care premises only, not to the general location of the child care facility, including ranches or farms.

NEW RULE XXX ANIMALS

The department proposes to combine content from ARM 37.95.121 and 37.95.1110, on the presence of animals in a child care facility. The proposed rule would provide clear guidance on how to include domesticated animals at facilities. This would give in-home providers more flexibility to include pets and other domesticated animals in their child care programs. The proposed rule would maintain but streamline requirements to protect the safety of children in care.

NEW RULE XXXI BUILDING REQUIREMENTS RELATED TO EXITS

The department proposes to combine and condense content from ARM 37.95.121, 37.95.610, 37.95.705, and 37.95.1110, related to exits and egress. The proposed rule would clarify content that is similar, but not identical, across several current rules and align building exit and egress requirements with international fire and building codes. New content is proposed to make it explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would standardize building requirements across all provider types, except for RCE facilities (which would be exempt from the requirements) and decrease confusion about exits and egresses. It would also support increased capacity for providers residing in different types of residential settings. The proposed rule would support, but streamline, core fire safety and building code requirements.

NEW RULE XXXII INDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.610, 37.95.611, 37.95.705, 37.95.1021, 37.95.1120, and 37.95.1180, related to indoor space requirements. The proposed rule would combine content that is identical across several rules, eliminating redundancy, and reduce regulations on how indoor space may be used. Consistent with fire codes, the proposed rule would bar the use of the third floors of private residences for child care purposes. The proposed rule would add flexibility for programs in shared spaces to utilize some indoor space on an infrequent basis (like a school gym or library). It also would make explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would increase flexibility for many types of providers in shared spaces, as well as for providers residing in different types of residential settings. These changes are being proposed with the goal of increasing overall child care capacity and diversity. The proposed rule would maintain, but streamline, core safety requirements of indoor spaces.

NEW RULE XXXIII OUTDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.610, 37.95.1015, and 37.95.1120, on the requirements for outdoor space. The proposed rule would clarify content that is similar, but not identical, across multiple current rules. The proposed rule would add flexibility to requirements for utilizing shared outdoor space if that space meets alternative, but equally rigorous, safety standards. This would give school-age care facilities and programs interested in different types of outdoor education more flexibility in meeting outdoor space requirements. It would also support programs in urban settings,

without access to private outdoor space, to use public outdoor space to meet requirements. These changes are intended to increase overall child care capacity and diversity. The proposed rule would maintain, but streamline, core safety standards for outdoor spaces.

NEW RULE XXXIV FIRE SAFETY REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.121, 37.95.706, and 37.95.1110, related to fire safety. The proposed rule would clarify content that is similar, but not identical, across several current rules. The proposed rule would also identify the minimum fire safety requirements that group child care, family child care, and FFN providers must meet. The proposed rule would clarify the role of the fire marshal in inspecting child care facilities with 16 or more children. These provisions would decrease confusion among providers about fire safety requirements and increase consistency in expectations across all provider types, which could improve overall safety of children and staff.

The proposed rule would also clarify that an extension cord cannot be used to supply electricity to equipment or appliances that are fixed in place because such use is a fire hazard.

The proposed rule would maintain, but streamline, core fire safety standards.

NEW RULE XXXV EMERGENCY AND DISASTER PREPARATION

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.124, and 37.95.1140, related to emergency preparedness. The proposed rule would combine content that is similar, but not identical, across several current rules, and add detail to clarify and align requirements for registered FFN providers with federal health and safety requirements, specifically 45 CFR § 98.41(a)(1)(vii). This would decrease burden on providers by providing a checklist of plans and actions necessary for emergency preparedness, improving overall safety of children and staff.

NEW RULE XXXVI SAFETY AROUND BODIES OF WATER

The department proposes to combine and condense content from ARM 37.95.103 and 37.95.127, related to safety around swimming pools and other bodies of water. The proposed rule would remove confusing language, and detail supervision requirements for children around swimming pools and other bodies of water. The proposed rule would provide the strongest supervision requirements for the youngest children, who are unable to swim or touch the bottom of most bodies of water, and lessen the requirements for older children, without jeopardizing the safety of older children in care. This would give school-age care facilities more flexibility to take children on field trips involving water bodies without jeopardizing child safety.

NEW RULE XXXVII TRANSPORTATION SAFETY

The department proposes to repeal ARM 37.95.132, and replace it with NEW RULE XXXVII, to reduce unnecessary and redundant detail, and to add detail that aligns

transportation safety requirements with the needs of school-age care providers. The proposed rule would consolidate requirements related to child seats and restraints, and overall safe driving practices. It also would clarify how providers may use school buses for program-related transportation. This would decrease the burden of an overly prescriptive rule and give school-age care providers the option to utilize various forms of transportation, which could increase overall child care capacity for school-age children.

NEW RULE XXXVIII SLEEPING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.210, 37.95.613, 37.95.619, 37.95.718, 37.95.720, 37.95.1005, 37.95.1016, 37.95.1105, and 37.95.1110, on safe sleep environments. The proposed rule would combine content that is similar, but not identical, across several rules, and reduce redundancy. The proposed rule would use the definition of firm sleep surface, proposed in another proposed rule, which includes cradleboards. This proposed rule would provide a single, clear location for all sleep requirements and guidance, which could improve the safety of children while in a sleep environment by using a simple, clear explanation of what is needed to establish a safe sleep environment. It is also intended to support a culturally inclusive approach to safe sleep by clarifying when and how a firm sleep surface, including cradleboards, can be used. The proposed rule would maintain, but streamline, core sleep safety standards.

Medical Health

The department proposes to repeal ARM 37.95.103, 37.95.181, 37.95.182, 37.95.183, 37.95.184, 37.95.1015, and 37.95.1110.

NEW RULE XXXIX MEDICAL HEALTH DEFINITIONS

The department proposes to organize the definitions of terms specific to medical and health issues in this proposed rule, so that the definitions of such terms are located in the same new subchapter with the rules that address such issues and topics. To offer providers greater clarity, the following additional terms would be defined in this proposed rule: health care provider, medication, and supplement. The department expects that the grouping of the definitions with the related issues and topics would increase the readability and useability of the rules.

NEW RULE XL MEDICATION ADMINISTRATION

The department proposes to combine and condense content in ARM 37.95.103, 37.95.181, 37.95.182, and 37.95.1110, related to the handling, storage, and administration of medications. The proposed rule would combine content that is similar, but not identical, across a number of current rules and remove the redundancy in the current rules. This would give providers and parents a single location for all requirements related to medication, which could improve child safety through better medication management. The proposed rule would maintain, but streamline, core medication safety standards.

NEW RULE XLI MANAGEMENT OF ILLNESS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.139, 37.95.184, and 37.95.1110, on the management of illnesses in children and staff. The proposed rule would update many exclusion and inclusion criteria (when a child must be sent home because of illness and when they can stay in, or return to, child care) to align with current standards from the American Academy of Pediatrics. It would also align exclusion requirements with House Bill 702 (HB 702) passed in the 2021 Legislative Session, which barred discrimination based on immunization status. HB 702 excludes from the bar on discrimination vaccination requirements set forth for day care facilities pursuant to Title 52, chapter 2, part 7, MCA (Montana Child Care Act). However, other child care rules that do not constitute "vaccination requirements" are subject to HB 702's bar on vaccination status discrimination. Current ARM 37.95.140(8) makes distinctions between people based on their vaccination status, and the proposed rule would remove this distinction to align with HB 702. This would decrease burden on families because fewer illnesses would require full exclusion from child care, and give providers more flexibility in how they manage day-to-day illnesses. The proposed rule also clarifies the appropriate communication pathways in the event of a communicable disease outbreak, which could decrease overall impact on child care availability by increasing timely communication among child care providers, families, and the local health authority. The proposed rule would not increase health risks to children.

NEW RULE XLII FIRST AID

The department proposes to combine and condense content from ARM 37.95.183, 37.95.1015, and 37.95.1110, on required first aid supplies and procedures. The proposed rule includes only content from existing rules that directly relates to first aid; no new requirements are being proposed. However, the proposed reorganization of the requirements into one rule would give providers and families a clear understanding of how first aid is to be administered in child care settings.

Environmental Health

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.126, 37.95.184, 37.95.205, 37.95.206, 37.95.207, 37.95.210, 37.95.214, 37.95.225, 37.95.226, 37.95.227, 37.95.708, 37.95.1001, 37.95.1002, 37.95.1004, 37.95.1021, 37.95.1110, and 37.95.1180.

NEW RULE XLIII ENVIRONMENTAL HEALTH DEFINITIONS

The department proposes to group definitions related to environmental health in this new rule at the beginning of the new subchapter on environmental health. In the proposed rule, one definition of a new term has been added: smoke-free environment. The proposed reorganization is intended to increase readability and useability.

NEW RULE XLIV HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES

The department proposes to repeal content from ARM 37.95.106, on the role of public health authorities in inspecting licensed child care programs of 16 or more children, and to create NEW RULE XLIV. The proposed rule does not include the list of rules that fall under environmental health or the current requirement for multiple, duplicative inspections when a child care program utilizes a space that is independently subject to public health inspections. This proposed change would decrease the burden on any child care program operating in a shared space and clarify the role of public health inspections for licensed child care centers and other providers with 16 or more children.

NEW RULE XLV SMOKE-FREE ENVIRONMENT

The department proposes to combine content from ARM 37.95.103 and 37.95.126, related to smoke-free environments. The proposed rule would add vapor product use to the list of prohibited activities while children are in care. This would clarify for child care providers and staff that all child care facilities must be completely smoke-free during child care hours, which could improve overall child health, while not arbitrarily prohibiting adult use of tobacco, nicotine, and vapor products outside of child care hours. Under the proposed rule, RCE providers would be exempt from this proposed rule.

NEW RULE XLVI OUTDOOR AIR QUALITY

The department proposes to add a rule on outdoor air quality standards that would align with public health requirements applicable to public schools (ARM 37.111.827). The proposed rule would require providers to follow outdoor air quality guidelines to determine when and where outdoor activities should occur. This would protect children from the negative impacts of smoke and other outdoor air pollutants by giving providers and staff clear guidelines about when exposure to outdoor air would be harmful, which could improve overall child health.

NEW RULE XLVII INDOOR AIR QUALITY

The department proposes to add a rule related to indoor air quality. The proposed rule is a simplified version of public school requirements related to indoor air quality (ARM 37.111.826) and includes air temperature as well. Based on updated information about how to decrease the likelihood of communicable disease and allergens indoors, the department believes that buildings with centralized HVAC systems should maintain minimum cleanliness standards. This proposed rule would protect children from airborne pathogens and allergens, which could improve overall child health.

NEW RULE XLVIII HAND HYGIENE

The department proposes to combine and condense content from ARM 37.95.103, 37.95.184, 37.95.207, 37.95.708, and 37.95.1110, on handwashing. The proposed rule would decrease the number of regulations on hand washing and focus on the desired outcome, which is consistent hand washing before and after key activities. This should decrease the burden of following overly detailed rules, which could increase compliance and, thus, improve the overall health of children. The proposed rule would maintain, but streamline, protections for child health.

NEW RULE XLIX BATHROOM HYGIENE

The department proposes to combine and condense content from ARM 37.95.103, 37.95.207, 37.95.210, 37.95.214, 37.95.708, and 37.95.1001, related to maintaining clean bathrooms and bathroom routines. The proposed rule would combine content that is similar, but not identical, across multiple current rules. It also separates out proposed requirements on bathrooms from content on diapering (proposed NEW RULE LIII). This would decrease the burden on providers to maintain specific bathroom configurations and instead focus on the desired outcome, which is the avoidance of illness related to poor hygiene. The proposed rule would maintain protections for child health.

NEW RULE L SOLID WASTE MANAGEMENT

The department proposes to combine and condense content from ARM 37.95.103, 37.95.205, 37.95.210, 37.95.708, 37.95.1001, and 37.95.1002, related to solid waste management. The proposed rule would reduce the requirements about how to dispose of solid waste, and focus instead on the desired outcome, which is the avoidance of contamination from solid waste. The proposed rule would decrease the regulatory burden on providers, while maintaining and streamlining protections for child health.

NEW RULE LI LAUNDRY AND CLOTHING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.184, 37.95.206, 37.95.210, 37.95.708, 37.95.1002, 37.95.1021, 37.95.1110, and 37.95.1180, on laundry and soiled clothing. The proposed rule would reduce the number of current requirements, and focus on the desired outcome, which is clean laundry that is not contaminated by soiled laundry and, thus, does not present a health hazard to children. This proposed rule would decrease the current burden on child care providers to comply with very specific regulatory requirements, such as the temperature of hot water.

NEW RULE LII SANITATION

The department proposes to combine and condense content from ARM 37.95.207 and 37.95.708, related to sanitizing surfaces and toys in a child care facility. The proposed rule would eliminate many of the detailed requirements of ARM 37.95.207, and add clarifying language to other requirements.

NEW RULE LIII DIAPERING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.210, 37.95.1001, and 37.95.1180. The proposed rule would not adopt many of the detailed requirements in ARM 37.95.1001, but maintain most required diapering practices. The proposed rule would also clarify and simplify requirements related to handling cloth diapers. This would decrease the burden on child care providers to ensure that they are meeting all diaper-related sanitation requirements, and increase family choice by giving such providers guidance on accepting and utilizing cloth diapers.

NEW RULE LIV BATHING

The department proposes to combine and condense content from ARM 37.95.207, 37.95.210, and 37.95.1004, related to bathing children. The proposed rule would combine requirements for bathing into one location and provide clarity to child care providers in meeting bathing requirements.

NEW RULE LV WATER SUPPLY SYSTEM

The department proposes to combine and condense content from ARM 37.95.103, 37.95.225, and 37.95.708, related to water systems. The proposed rule is not substantially different from ARM 37.95.225, but would omit duplicative requirements from other current rules. This proposed rule would provide clarity on water system requirements for child care facilities.

NEW RULE LVI SEWAGE SYSTEM

The department proposes to combine and condense content from ARM 37.95.103, 37.95.225, 37.95.226, and 37.95.708, related to sewage systems. The proposed rule is not substantially different from ARM 37.95.226, but would omit duplicative requirements from other current rules. This proposed rule would provide clarity on sewage system requirements for child care facilities.

NEW RULE LVII SWIMMING POOL SANITATION

The department proposes to adopt this proposed rule to clarify swimming pool sanitation requirements. The proposed rule mirrors the existing public health rule on the same topic, ARM 37.115.106, providing common sense alignment.

NEW RULE LVIII FOOD PREPARATION AND HANDLING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.214, and 37.95.708, on preparing and handling food, as well as the cleaning of dishes and utensils. The proposed rule would decrease the overall specificity of the current rules, and align with ARM 37.95.708. This proposed rule would decrease burden on child care providers to maintain equipment in a specific way, and instead focus on the desired outcome, which is the avoidance of food-borne illness or other food-related challenges. The proposed rule would maintain but streamline core food safety requirements that maintain child health and well-being.

Nutrition and Food Service

The department proposes to repeal ARM 37.95.102, 37.95.103, 37.95.215, 37.95.711, 37.95.720, 37.95.1003, 37.95.1016, 37.95.1021, 37.95.1105, 37.95.1160, and 37.95.1180.

NEW RULE LIX NUTRITION AND FOOD SERVICE DEFINITIONS

The department proposes to group definitions related to nutrition and food service health in this proposed rule, immediately before the substantive rules on these subjects, in a new subchapter. In the proposed rule, the definition of USDA has been proposed. The intent of this proposed reorganization is to increase readability

and useability of the rule chapter by providing clear definitions immediately before the rules in which the terms are used.

NEW RULE LX NUTRITION REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.215, 37.95.619, 37.95.711, and 37.95.1160, related to nutrition. The proposed rule would decrease the overall specificity and detail of the current rules, and align with ARM 37.95.711. The current rule falls within the local health authority subchapter; the new structure and content make it clear that local health authority staff are not responsible for overseeing these requirements.

NEW RULE LXI INFANT FEEDING

The department proposes to condense and combine content from ARM 37.95.103, 37.95.1003, 37.95.1021, and 37.95.1180, related to infant feeding. The proposed rule would combine content that is similar, but not identical, across multiple current rules, and align with ARM 37.95.1003.

The proposed rule is being updated to reflect current best practices related to infant feeding pursuant to Caring for Our Children (CFOC), chapter 4.3.1 Nutrition for Infants. CFOC is a set of national standards that represents the best practices for quality health and safety policies and practices in early care and education settings. This would decrease the burden on child care providers to make decisions about how they manage infant feeding, which could increase overall child care capacity for infants by improving providers' comfort with serving this population.

NEW RULE LXII FOOD SERVICE EQUIPMENT

The department proposes to combine and condense content from ARM 37.95.103, 37.95.163, 37.95.720, 37.95.1003, 37.95.1016, and 37.95.1105, related to equipment for meal times. The proposed rule would combine content that is similar, but not identical, across multiple current rules, and add safety details about chairs that hook onto counters. This would decrease the burden on providers by providing a single location for these requirements.

Immunizations

The department proposes to repeal ARM 37.95.102, 37.95.140, and 37.95.1130 and remove staff immunization requirements from repealed ARM 37.95.160, 37.95.184, 37.95.622, 37.95.703, and 37.95.704.

NEW RULE LXIII IMMUNIZATION DEFINITIONS

The department proposes to adopt the definitions in ARM 37.95.102 and would add the following additional definitions in this proposed rule: adequate documentation, CLIA, conditional attendance, conditional attendance form, immunization information system, medical exemption, medical exemption statement form, Montana certificate of immunization form, MR vaccine, official vaccination record, polio vaccine, religious exemption, religious exemption form, Td vaccine, and Tdap vaccine. This would

ensure that all terms related to immunizations are defined in this proposed rule, immediately adjacent to the proposed rules on immunizations.

The department proposes to align the definitions of these vaccination terms with those used in ARM 37.114.701 through 37.114.799: Immunization of School Children. Aligning such terms and exemptions with the terms and exemptions applicable to schools allows for consistency for a parent or guardian as the child transitions from a child care facility to school, ease of understanding, and gives a parent or guardian the same exemption options allowed in K-12 schools. This would also increase the readability and useability of the rules by providing clear definitions of the terms used in this specific topical area.

NEW RULE LXIV MINIMUM CHILD IMMUNIZATIONS REQUIREMENTS

The proposed new rule reiterates the ACIP (Advisory Committee on Immunization Practices) child immunization schedule in current ARM 37.95.140. The department proposes to clarify that there are no new or additional vaccine requirements for a child care program outside of the vaccines listed in proposed NEW RULE LXIV. The specific immunizations required in this proposed rule, as well as those for school-age children listed in ARM 37.114.703, align with federal guidelines on immunization categories and schedules, and thus meet the requirements of federal regulation at 45 CFR § 98.41(a)(1)(i). This provides clarity as to the minimum requirements for children attending child care and allows for parental choice with respect to any additional vaccines. The proposed rule additionally clarifies there are no immunization requirements for RCE providers or for FFN providers caring for children from one sibling group.

NEW RULE LXV EXEMPTIONS FROM VACCINATION

The department proposes to update its regulatory provisions on vaccine exemptions. The department proposes to add a religious exemption for all vaccines. It also proposes to clarify the requirements and applicability of medical exemptions. The department further proposes to clarify that vaccine records for children at a child care program are limited to child immunizations under the vaccine schedule listed in the proposed rule. The department proposes adding language that a home-based child care provider (FFN, family, or group child care facility) has the option about whether they enroll children who are not vaccinated in accordance with the schedule in the proposed rule. Home-based providers would have to maintain policies and procedures to inform parents and guardians if the child care provider accepts children with exemptions from required vaccines. This, thus, would give choice to families with medical or religious exemptions; ensure compliance of the current and proposed vaccination requirements with the Montana Religious Freedom Restoration Act, Senate Bill 215 from the 2021 Montana Legislative Session; allow for parental choice in any additional vaccines a parent may choose for their child; simplify the documentation requirements for a parent or guardian because the same document could be used when a child who is not yet school-age transitions into a school setting; and give in-home providers the choice to set different policies to align with the needs of their own households. Ultimately, a parent or guardian would determine the child care setting that best suits the needs of their child(ren). If the

parent or guardian is informed of the child care provider's vaccination policy, they can make the best decision for their child(ren). Under the proposal, child care centers would not have the same flexibility (1) in order to ensure there are child care settings supporting parents' and guardians' needs and choices regarding vaccinations; and (2) because the concerns that led to the proposal to provide flexibility for in-home providers do not apply to child care centers.

Home-based business owners caring for mixed age groups would be allowed autonomy in their choice to serve vaccination-exempt children; this will allow home-based providers to make choices for their own health and the health of their family members and the children in their care, who may not be old enough to be vaccinated.

In contrast, child care centers are required to separate children by age group, which has the effect of protecting younger children who have not yet had the opportunity to be vaccinated. The department will maintain a list of providers by vaccination policy type.

NEW RULE LXVI REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS

The department proposes to align vaccination documentation requirements with ARM 37.114.703: Requirements for Adequate Documentation of Immunization Status, which applies to immunization of school children. The proposed rule would clarify the acceptable forms of documentation and remove the requirement that school-age children attending public school provide immunization documentation to school-age care providers. This would simplify the documentation requirements for a parent or guardian and make it easier for school-age care providers to verify immunization status, which reduces burden on those child care providers and could increase overall capacity. The department believes these changes would simplify documentation requirements for parents and guardians because the same document could be used when a child who is in child care transitions into a school setting.

NEW RULE LXVII EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS

The department proposes to add a rule clarifying that the department and local health authority representatives can audit child immunization records during annual inspections of all licensed or registered child care providers other than FFNs and RCEs, or during unannounced inspections for licensed child care providers. This proposed requirement would align with 45 CFR § 98.42(b)(2)(i)(B), requiring an inspection and verification of child immunization records during the annual inspection process.

For children who attend public school, New Rule LXVI allows for a signed parental statement that the required immunization record is on file with the school, and auditing of the immunization records of children cared for by a licensed school-age care provider would look at these signed statements. This is an appropriate level of

oversight because attendance in a public school requires adequate documentation of immunization status that is verified by a school administrator or medical staff.

NEW RULE LXVIII IMMUNIZATION STATUS AS CONDITION OF ATTENDANCE

The department proposes to clarify the immunization statuses that allow children to continue to attend a licensed or registered child care facility. The proposed rule adds language related to religious exemptions. This aligns with the Montana Religious Freedom Restoration Act, SB 215 from the 2021 Montana Legislative Session, and the changes made through NEW RULES LXIV, LXV, and LXVI. This would additionally provide clear and concise standards for child care providers and parents.

Staff Qualifications and Training

The department proposes to repeal ARM 37.95.102, 37.95.103, 37.95.162, 37.95.163, 37.95.622, 37.95.624, 37.95.703, 37.95.704, and 37.95.1170.

NEW RULE LXIX QUALIFICATIONS AND TRAINING DEFINITIONS

The proposed rule would edit and delete definitions from ARM 37.95.102, related to staff qualifications and training. The proposed rule would also add the following new definitions: on-the-job training, orientation training, and site director. Other terms have been updated, specifically removing the modifier "early childhood" before "lead teacher" and "teacher." These proposed definitions would align with the proposed rules on child care staff and training, including the new licensing track for school-age care providers with its focus on caring for school-age children, in comparison with the current terminology focused primarily on early childhood educators.

NEW RULE LXX DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.624, 37.95.703, and 37.95.1170, to consolidate director responsibilities and qualifications into one rule. The proposed rule would include streamlined qualifications allowing for increased diversity in this role, which is needed to accommodate the broad array of professionals and program settings. This proposed change responds to feedback provided by stakeholders through the child care licensing assessment process, allowing individuals with diverse education, training, and professional experience to meet the requirements to serve in the director role. This is important and necessary to grow Montana's child care system and workforce, which is essential to increase its child care capacity.

NEW RULE LXXI SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would add site director as a new staff role, which supports multi-site providers, including school-age care providers. Through the child care licensing assessment process, stakeholders conveyed to the department that this role was needed to accurately represent their staffing models. The education, training, other licensure, and experience qualifications for the role of site director would follow the model established in NEW RULE LXX with respect to the required qualifications of a

child care program director. This proposed rule is further designed to support a diverse, qualified child care workforce and to expand Montana's child care capacity.

NEW RULE LXXII LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.622, 37.95.704, and 37.95.1170, to consolidate lead teacher responsibilities and qualifications in one rule. The proposed rule changes the title of the position from "early childhood lead teacher" to "lead teacher," to incorporate the different needs of all lead teachers, including school-age care program lead teachers who would not care for children in early childhood. As with NEW RULE LXXI, the education, training, other licensure, and experience qualifications for the role of lead teacher would follow the model established in NEW RULE LXX with respect to the required qualifications of a child care program director. As there, this proposed rule is further designed to support a diverse, qualified child care workforce and expand Montana's child care capacity.

NEW RULE LXXIII TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.622 and 37.95.704, to consolidate teacher responsibilities and qualifications in one rule. The proposed rule would provide a consistent qualifying age for this role of 16 years of age. As with NEW RULE LXXII, the proposed rule would remove "early childhood" from the title of the role to be inclusive of teachers in school-age care facilities.

NEW RULE LXXIV SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS

This proposed rule would incorporate content from ARM 37.95.162 and 37.95.622, in modified form, to provide a consolidated and concise rule for substitutes across all staff roles.

NEW RULE LXXV TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

This proposed rule would incorporate content from ARM 37.95.622 and 37.95.704, in modified form, to provide a consolidated and concise rule for trainees. The proposed rule would extend the time a staff member can be a trainee from 30 to 90 days in order to allow more time to complete required trainings. This change is proposed in response to child care licensing assessment findings.

NEW RULE LXXVI SUPPORT STAFF QUALIFICATIONS

The proposed rule would add new requirements related to support staff. The proposed rule would clarify and ease understanding of required qualifications for support staff, as well as align with 45 CFR § 98.43(a)(2)(ii).

NEW RULE LXXVII VOLUNTEER QUALIFICATIONS

The proposed rule would add new requirements related to volunteers, clarifying required qualifications. These proposed changes are based on the feedback provided by child care programs during the child care licensing assessment process indicated a need for clarity about volunteer roles and responsibilities; the proposed rule is intended to provide the requested clarification.

NEW RULE LXXVIII ORIENTATION TRAINING

The proposed rule would incorporate content from ARM 37.95.163, in modified form, and provide concise information on who is required to complete orientation training, when, and what the training must cover.

NEW RULE LXXIX ANNUAL TRAINING

The proposed rule would incorporate requirements from ARM 37.95.162. It would clarify and streamline annual training requirements for staff with respect to each child care license or registration type. The proposed changes are intended to support a broader diversity of annual training options aligned with providers' specific needs, including training focused on school-age children or more advanced training options for experienced teachers.

NEW RULE LXXX HEALTH AND SAFETY REFRESHER COURSE

The proposed rule incorporates content from ARM 37.95.162, in modified form, to clean up and clarify current rule language.

Background Checks

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.108, 37.95.110, 37.95.161, 37.95.173, 37.95.176, 37.95.704, and 37.95.1110.

NEW RULE LXXXI BACKGROUND CHECK DEFINITIONS

The department proposes to group definitions related to background checks in this proposed rule, immediately before the substantive rules on background checks, in a new subchapter on the subject. In the proposed rule, the following new definitions have been proposed: may deny crime, must deny crime, satisfactory results of background checks, and unsatisfactory results of background checks. The intent of this proposed reorganization of definitions is to increase readability and useability of the rules by offering providers, staff, and families clear definitions of the terms used in connection with background checks immediately before the rules in which the terms are used.

NEW RULE LXXXII FINGERPRINT AND BACKGROUND CHECKS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.110, 37.95.161, and 37.95.704, related to background checks for all adult household members or staff in child care facilities. The proposed rule would clarify who is required to have a background check conducted and the frequency of each type of required background check. The proposed rule would require background checks for any adult living where a FFN or RCE provides care; however, a parent would not require a background check when care is provided in the child's home. This would streamline expectations and timelines for new staff hires and staff renewals, which may decrease the burden of hiring and retaining staff.

These proposed changes align with the child care licensing assessment findings, and would ensure that the state requirements are aligned with federal regulatory requirements. There is a specific need to clarify when adults residing in the home of an FFN provider are required to undergo a background check. Federal regulation at

45 CFR § 98.41(a)(1)(i)(B)(2) allows the department to exempt child care providers from certain health and safety rules, including background checks, so long as all the children being cared for are receiving care in their own home. If an FFN provider is providing care in one child's home and there are other, unrelated children receiving care who do not reside in that home, then the federal regulation noted above requires that any adult living in the home in which care is provided must receive a background check.

NEW RULE LXXXIII BACKGROUND CHECK RESULTS THAT MUST RESULT IN THE DENIAL OF AN APPLICANT

The department proposes to clarify the background check results that must lead to a determination that an individual is ineligible to be employed or present in a child care setting. The proposed rule does not include two crimes – prostitution and burglary – that are currently listed in ARM 37.95.176, but do not meet the federal definition of crimes for which an application must be denied pursuant to 45 CFR § 98.43(c), and includes two new crimes – arson and misdemeanor partner/family member assault when the victim is a minor. This proposed change would align the state's rules with the federal regulatory requirement, at 45 CFR § 98.43(c), that felony and serious misdemeanor crimes impacting a victim's physical or emotional well-being constitute crimes that must make an individual ineligible to work or be present in a child care facility. These proposed changes would align the state regulations with the aforementioned minimum federal requirements.

NEW RULE LXXXIV BACKGROUND CHECK RESULTS THAT MAY RESULT IN THE DENIAL OF AN APPLICANT

The department proposes to clarify when/whether background check results permit the department discretion in determining if an individual is ineligible to be employed by a child care facility, or be present in a child care setting. The proposed rule would add two crimes – prostitution and burglary, which would no longer be an automatic bar – and would also add being named in a founded report of child abuse or neglect. These additions give the department discretion to evaluate these situations on a case-by-case basis, balancing any risk to children in care with the goal of not arbitrarily prohibiting rehabilitated individuals from working in child care.

The proposed rule would clarify that being named as a perpetrator in a founded report of child abuse or neglect cannot be the sole reason for denying an application based on the background check.

These proposed changes, thus, align the state regulations with the minimum federal requirements found in 45 CFR § 98.43(c)(1)(iv)-(v), while also providing the state discretion to evaluate each case on an individual basis before requiring that someone be denied employment or be fired from their job.

NEW RULE LXXXV OFFENSES AND INVESTIGATIONS THAT ARE PENDING RESOLUTION

The department proposes to clarify that an individual charged with a crime that, if convicted, must make the individual ineligible to be present in a child care facility,

shall be excluded from the child care facility, during the times child care is being provided, pending the resolution of the criminal charges. The proposed rule would clarify existing language in ARM 37.95.173, and provide increased clarity for providers and individuals in their households regarding pending criminal cases. The department believes that the proposed changes are necessary to balance the department's responsibility to help ensure children are safe in child care facilities with the understanding that criminal charges are not an adjudication of guilt. The proposed rule would give the department discretion if there are not criminal charges but there is an ongoing investigation involving a child care staff. The department also believes the proposed exclusion requirement during child care hours protects children without arbitrarily excluding a person from a place where it is otherwise lawful for them to be.

NEW RULE LXXXVI PROCESS TO REQUEST ADMINISTRATIVE RECONSIDERATION OF BACKGROUND CHECK RESULTS AND DEPARTMENT DETERMINATION

The department proposes to clarify and ease the process for requesting a correction of inaccurate background check results. The proposed rule would explain the difference between requesting correction of inaccurate information and requesting a reconsideration based on evidence of rehabilitation from crimes that otherwise result in a determination of ineligibility due to a may-deny background check finding. These proposed changes are intended to clarify, for providers and staff, who can request reconsideration, which may streamline the staff hiring process. It would also protect staff privacy by giving staff more of a role in requesting a reconsideration. Considering ongoing child care workforce shortages, the department also believes these changes would help prevent situations where an otherwise qualified child care applicant is not hired because of inaccurate criminal justice information, or where the applicant has been rehabilitated.

Enforcement

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.108, 37.95.154, 37.95.176, and 37.95.730.

NEW RULE LXXXVII COMPLAINTS AND INVESTIGATIONS

The proposed rule would incorporate content from ARM 37.95.103, 37.95.106, 37.95.108, 37.95.154, and 37.95.730, in modified form, to provide one location for the complaint and investigation processes, corrective action, and negative licensing or registration action. Having one concise rule should make the process more understandable and establish clear guidelines for providers and the department.

NEW RULE LXXVIII LICENSING OR REGISTRATION CORRECTIVE ACTION

The department proposes this new rule to provide clarity on the corrective action process. These proposed changes are intended to give notice to child care providers on corrective action plan content, and on the process by which providers could submit additional information to the department in the event of a contested deficiency. These proposed changes would also provide an opportunity for child

care providers and the department to collaborate and resolve alleged violations early in the process, preventing the elimination of critical child care slots while ensuring child safety.

NEW RULE LXXXIX TIME PERIOD FOR CORRECTING NON-COMPLIANCE

This proposed rule would establish the basis on which the department would determine the time period for correcting licensure or registration non-compliance. This rule would give providers notice of what factors the department would consider when determining how long providers have to take corrective measures in the event they are found to be in non-compliance of a regulation.

NEW RULE XC DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OF A LICENSE OR REGISTRATION

The proposed rule would adopt text from ARM 37.95.176 to establish the process for denying, suspending, revoking, or modifying a child care license or registration. The proposed rule supports RRI through shorter, clearer, easier-to-locate rules.

NEW RULE XCI VIOLATIONS THAT MAY RESULT IN NEGATIVE LICENSING OR REGISTRATION ACTION

The proposed rule would adopt language from ARM 37.95.176 and provide clarity on the violations that can result in negative licensure or registration action. The current rule is substantively similar, but is drafted in a way that causes confusion. The proposed rule does not include duplicative violations, reducing the length, and increasing the readability, of the rule.

NEW RULE XCII NOTICE OF LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION

This proposed rule would provide clear notice that denial, suspension, or revocation of a license or registration is an adverse department action and that affected licensees, registered providers, or applicants have the right to an administrative hearing and appeal procedures.

NEW RULE XCIII ISSUING A PROBATIONARY LICENSE OR REGISTRATION

The proposed rule would update ARM 37.95.176(4), creating one rule about probationary licenses. The proposed rule would also shift the notification requirements from the department to the child care provider, which would support provider-family relationships.

NEW RULE XCIV PROVIDING UNLICENSED OR UNREGISTERED CARE

Pursuant to 52-2-721, MCA, a person who provides day care in a private residence for six or fewer children is not required to be licensed or registered with the department. Additionally, pursuant to NEW RULE II and 52-2-703, MCA, drop-in child care facilities, school-age care facilities, FFN providers, and RCE providers have the option of being licensed or registered.

This proposed rule would clearly establish the roles and responsibilities of the department with respect to an unlicensed or unregistered provider when a license or

registration is required to operate lawfully. CCL staff cannot take additional steps beyond those outlined in 52-2-741, MCA.

NEW RULE XCV REAPPLICATION AFTER DENIAL, SUSPENSION, OR REVOCATION

The proposed rule would adopt, in modified form, content from ARM 37.95.175 to clarify whether and when applicants, licensees, and registered providers can reapply for a license or registration after a negative action. It would allow reapplication to occur immediately if the denial is a result of incomplete information, changing the current requirement of a year suspension prior to any action on a reapplication. The department believes that the current rule may inappropriately preclude applicants denied a license or registration due to incomplete information from reapplying for a year after denial. The new rule would also separate the consequences of suspension from those of revocation, which are currently combined, as well as eliminate an unnecessary barrier to offering needed child care services.

NEW RULE XCVI FAIR HEARING

This proposed new rule would clarify the fair hearing process for an applicant, licensee, or registered provider.

Fiscal Impact

The department does not anticipate any fiscal impact associated with these proposed rule amendments.

6. The department intends for the effective date of these new rules to be the day after the date of the publication of the adoption notice, except NEW RULES III, IV, and VII, to the extent that they implement HB 336, HB 422, and/or HB 556, enacted during the 2023 Legislative Session, would be adopted retroactive to October 1, 2023.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above.

10. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

11. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsors were notified by email on August 25, 2023.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will significantly and directly impact small businesses.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State October 10, 2023.

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 44.11.227 pertaining to) AMENDMENT
contribution limits)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Office of the Commissioner of Political Practices (COPP) proposes to amend the above-stated rule.

2. The Office of the Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the Commissioner of Political Practices no later than 5:00 p.m. on November 3, 2023, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail Scook3@mt.gov.

3. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

44.11.227 LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS TO A CANDIDATE (1) Pursuant to the calculation specified in 13-37-216, MCA, limits on total combined contributions by a political committee, other than a political party committee, or by an individual to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$1,000~~ \$1,120;

(b) a candidate for other statewide office may receive no more than ~~\$700~~ \$790;

(c) a candidate for all other public offices may receive no more than ~~\$400~~ \$450.

(2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:

(a) candidates filed jointly for governor and lieutenant governor may receive no more than ~~\$100,000~~ \$112,200;

(b) a candidate for other statewide offices may receive no more than ~~\$75,000~~ \$84,150;

(c) a candidate for Public Service Commission may receive no more than ~~\$15,000~~ \$16,850;

(d) a candidate for senate may receive no more than ~~\$3,000~~ \$3,350;

(e) a candidate for all other public offices may receive no more than \$2,000 \$2,250.

(3) and (4) remain the same.

AUTH: 13-37-114, MCA

IMP: 13-37-216, MCA

REASON: The COPP is amending this rule to reflect the inflation factor change in aggregate contribution limits to candidates from individuals or political parties for the 2024 election cycle.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Scott Cook, Office of the Commissioner of Political Practices, 1209 Eighth Ave., P.O. Box 202401, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail Scook3@mt.gov, and must be received no later than 5:00 p.m., November 17, 2023.

5. If persons who are directly affected by the proposed actions which to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., November 10, 2023.

6. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an associating having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 150 persons based on the number of candidates in the 2022 and 2023 election cycles (approximately 1,500).

7. The COPP maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the COPP.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the COPP has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Scott Cook
Scott Cook
Rule Reviewer

/s/ Chris J. Gallus
Chris J. Gallus
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State October 10, 2023.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.4202, 6.6.4203, 6.6.4204,)
6.6.4211, and 6.6.4212 pertaining to)
the Continuing Education Program for)
Insurance Producers and Consultants)

TO: All Concerned Persons

1. On August 25, 2023, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-280 pertaining to the proposed amendment of the above-stated rules at page 778 of the 2023 Montana Administrative Register, Issue Number 16.

2. A public hearing was not contemplated or requested. The department received no comments or testimony on the proposed amendment.

3. CSI has amended the above-stated rules as proposed.

/s/ Ole Olson
Ole Olson
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State October 10, 2023.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through V pertaining to)
Regulatory Sandbox Waivers)

TO: All Concerned Persons

1. On August 25, 2023, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-281 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 782 of the 2023 Montana Administrative Register, Issue Number 16.

2. On September 14, 2023, a public hearing was held in-person and electronically to consider the rulemaking. No one attended. One written comment was received on September 18, 2023, by email.

3. CSI has adopted NEW RULE I (6.6.9001), NEW RULE III (6.6.9003), NEW RULE IV (6.6.9004), and NEW RULE V (6.6.9005) as proposed.

4. CSI has adopted NEW RULE II with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE II (ARM 6.6.9002) WAIVER MONITORING (1) At the time of granting a waiver, the commissioner shall provide an insurer granted a waiver under [HB 836, Section 1] with a list of reporting requirements and dates for reporting as warranted by the facts and circumstances of the particular waiver.

AUTH: 33-2-2501, MCA
IMP: 33-2-2501, MCA

5. CSI has thoroughly considered the comments and testimony received. CSI received one comment in the form of a series of questions about how the program would apply to a specific party. During the comment period, parties were invited to submit "data, views, or arguments" relating to the proposed rule. 2-4-302(4), MCA. It is not clear from many of these questions whether the party posing those questions meant to support or oppose the rule. To the extent the questions posed related to the general structure of the proposed rules, or the statute itself, answers were set forth in response to each question below.

However, to the extent the rules asked the commissioner to apply the rules to a specific party's legal situation, this is inappropriate for the general rulemaking process, which requires CSI to give a "concise statement of the principal reasons for and against [the rule's] adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption." 2-4-305(1)(b), MCA. This

process does not require CSI to render specific legal advice to a particular party on how the rules may apply to them.

A summary of the comments received and CSI's responses are as follows:

COMMENT #1: The language mentions that the carrier needs to have a "physical presence" in the state to qualify. How exactly is "physical presence" defined? Does [the company] qualify because it is already licensed to do business in Montana? [The company] has some employees physically in the state; does that suffice?

RESPONSE #1: The term "physical presence" in the proposed rule comes from 33-2-2501, MCA, where that term is used but not defined. The commissioner will consider an entity's physical presence on a case-by-case basis based on the full factual record provided in an entity's waiver application. Questions seeking legal advice about the fact-specific application of the rules to a particular entity are outside the scope of the notice-and-comment process.

COMMENT #2: Are there any restrictions on the program duration such as a maximum number of years?

RESPONSE #2: The period for which an initial waiver and any extension may be granted is set forth in subsection (3) of the statute.

COMMENT #3: What is the likelihood that the commissioner would revoke a waiver? Under what conditions would that likely occur? [The company] asks because it would be cost-prohibitive to submit the application and implement the program, but then have the program terminated prematurely. [The company] would like to assess that risk.

RESPONSE #3: The conditions under which a waiver may be revoked by the commissioner are set forth in subsection (10) of the statute and in ARM 6.6.9003.

COMMENT #4: How would the unwinding of an approved program look? For example, say a customer enrolls in a sandbox program on January 1, and the program is slated to conclude March 1. The customer's policy is six months in duration and so her renewal would be up June 1. Would [the company] have to intervene mid-term for this individual's policy by March and change an applicable rating or could [the company] wait until her policy is up for renewal to put her on the non-sandbox rating?

RESPONSE #4: Unwinding of a program would be dictated by the terms and conditions of the waiver on a case-by-case basis as set forth in subsection (4) of the statute. Per ARM 6.6.9001(1)(j), the applicant must submit a plan for winding down the program at the time the applicant applies for a waiver. To the extent this comment was intended as opposition to adoption of the proposed rule, the commissioner will adopt the rule as written. Requiring a party to submit its own plan for winding down best serves the needs of the waiver program because it allows

each individual applicant to tailor the winding-down process to the particular proposed activity.

COMMENT #5: The proposed regulatory language states that an insurer would need to provide reports of any program to CSI/Commissioner. What exactly needs to be reported and how often?

RESPONSE #5: Per ARM 6.6.9002, reporting requirements will be provided to a waiver grantee on a case-by-case basis. In response to this comment, ARM 6.6.9002 was clarified to reflect the fact-specific considerations for each waiver's reporting requirements.

COMMENT #6: If an insurer applies for a new sandbox program, may it run the sandbox program concurrently with its current insurance model and have different consumers in two separate programs at the same time? Is a separate entity required to set up a sandbox program or can these be run under the umbrella of the existing insurance company?

RESPONSE #6: Section 33-2-2501, MCA, and the proposed rules do not contain any limitation on the number of waivers that may be granted to a single entity.

/s/ Andrew Cziok

Andrew Cziok
Rule Reviewer

/s/ Mary Belcher

Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State October 10, 2023.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the transfer of ARM) NOTICE OF TRANSFER
Title 37, chapter 108, subchapter 2)
pertaining to Network Adequacy for)
Managed Care Plans)

TO: All Concerned Persons

1. The Department of Public Health and Human Services (DPHHS) transfers the above-stated rules to the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), in ARM Title 6, chapter 6, subchapter 88.

2. This transfer is required because House Bill 156, Sections 38 through 53, 68th Legislature (2023), transferred from DPHHS to the CSI the administrative function and responsibilities related to ensuring compliance with standards for network adequacy for managed care.

3. The transferred rules are assigned the following numbers under the CSI:

<u>OLD</u>	<u>NEW</u>	
37.108.201	6.6.8801	DEFINITIONS
37.108.205	6.6.8805	ACCESS PLAN FILING AND REVIEW GUIDELINES
37.108.206	6.6.8806	ACCESS PLAN UPDATES
37.108.207	6.6.8807	ACCESS PLAN SPECIFICATIONS
37.108.208	6.6.8808	ACCESS CRITERIA
37.108.214	6.6.8814	MANDATORY COVERAGE
37.108.215	6.6.8815	PROVIDER-ENROLLEE RATIO REQUIREMENTS
37.108.216	6.6.8816	VERIFICATION OF PROVIDER CREDENTIALS
37.108.219	6.6.8819	GEOGRAPHIC ACCESS CRITERIA
37.108.220	6.6.8820	EXCEPTIONS TO GEOGRAPHIC ACCESS CRITERIA
37.108.221	6.6.8821	SERVICE AREAS
37.108.227	6.6.8827	MAXIMUM WAIT TIMES FOR APPOINTMENTS
37.108.228	6.6.8828	REFERRAL AND SPECIALTY CARE REQUIREMENTS
37.108.229	6.6.8829	CONTINUITY OF CARE AND TRANSITIONAL CARE
37.108.235	6.6.8835	SELECTING AND CHANGING PROVIDERS
37.108.236	6.6.8836	REMOVAL OF BARRIERS TO ACCESS
37.108.240	6.6.8840	MONITORING THE NETWORK

37.108.241	6.6.8841	LETTERS OF INTENT
37.108.242	6.6.8842	RESPONSIBILITY FOR CONTRACTED SERVICES
37.108.250	6.6.8850	CORRECTIVE ACTION
37.108.251	6.6.8851	APPEAL FROM DEPARTMENT DECISION

/s/ Ole Olson
Ole Olson
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State October 10, 2023.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the transfer of ARM) NOTICE OF TRANSFER
Title 37, chapter 108, subchapter 5)
pertaining to Quality Assurance for)
Managed Care Plans)

TO: All Concerned Persons

1. The Department of Public Health and Human Services (DPHHS) transfers the above-stated rules to the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), in ARM Title 6, chapter 6, subchapter 89.

2. This transfer is required because House Bill 156, Sections 38 through 53, 68th Legislature (2023), transferred from DPHHS to the CSI the administrative function and responsibilities related to ensuring compliance with standards for quality assurance and quality improvement for managed care plans.

3. The transferred rules are assigned the following numbers under the CSI:

<u>OLD</u>	<u>NEW</u>	
37.108.501	6.6.8901	PURPOSE
37.108.502	6.6.8902	DEFINITIONS
37.108.505	6.6.8905	QUALITY ASSURANCE STRUCTURE AND ACCREDITATION
37.108.506	6.6.8906	WRITTEN DESCRIPTION OF QUALITY ASSESSMENT PLAN
37.108.507	6.6.8907	COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES
37.108.510	6.6.8910	QUALITY IMPROVEMENT
37.108.511	6.6.8911	CLINICAL FOCUSED STUDY
37.108.515	6.6.8915	ENROLLEE COMPLAINT SYSTEM
37.108.516	6.6.8916	RECORDING CONSUMER SATISFACTION
37.108.520	6.6.8920	CORRECTIVE ACTION
37.108.521	6.6.8921	INFORMAL RECONSIDERATION OF DEPARTMENT DECISION

4. The transfer of these rules is effective January 1, 2024.

/s/ Ole Olson
Ole Olson
Rule Reviewer

/s/ Mary Belcher
Mary Belcher
Deputy Auditor
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of amendment of ARM	)	NOTICE OF AMENDMENT AND
8.111.501, 8.111.502, 8.111.503,	)	REPEAL
8.111.505, 8.111.506, 8.111.802,	)	
8.111.803, 8.111.804, 8.111.805, and	)	
8.111.806 and the repeal of ARM	)	
8.111.508 through 8.111.510 and	)	
8.111.512 through 8.111.515	)	
pertaining to the Board of Housing	)	
Temporary Assistance to Needy	)	
Families (TANF) and Coal Trust	)	
Multifamily Homes Loan Programs	)	

TO: All Concerned Persons

1. On September 8, 2023, the Department of Commerce published MAR Notice No. 8-111-202 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 936 of the 2023 Montana Administrative Register, Issue Number 17.

2. No comments or testimony were received.

3. The department has amended and repealed the above-stated rules as proposed.

/s/ Amy Barnes
Amy Barnes
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.8.509 and 18.8.513)
pertaining to Overdimensional Permit)
Requirements)

TO: All Concerned Persons

1. On September 8, 2023, the Department of Transportation (department) published MAR Notice No. 18-196 pertaining to the proposed amendment of the above-stated rules at page 980 of the 2023 Montana Administrative Register, Issue Number 17.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Dwane Kailey
Dwane Kailey
Chief Operating Officer
Department of Transportation

Certified to the Secretary of State October 10, 2023.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.156.401, 24.156.403,	)	ADOPTION, AND REPEAL
24.156.405, 24.156.409, 24.156.450,	)	
24.156.612, 24.156.613, 24.156.615,	)	
24.156.617, 24.156.2711, and	)	
24.156.2751, the adoption of New	)	
Rule I, and the repeal of ARM	)	
24.156.415, 24.156.604, 24.156.608,	)	
24.156.609, 24.156.616, 24.156.628,	)	
24.156.801, and 24.156.2715	)	
pertaining to the Board of Medical	)	
Examiners general revisions	)	

TO: All Concerned Persons

1. On August 25, 2023, the Board of Medical Examiners (agency) published MAR Notice No. 24-156-95 regarding the public hearing on the proposed changes to the above-stated rules, at page 819 of the 2023 Montana Administrative Register, Issue No. 16.

2. On September 15, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: Numerous commenters objected to striking recognition of AEMT-99 in ARM 24.156.2751(1)(c)(ii). The objections are primarily based on access to care in rural parts of the state.

RESPONSE 1: The comments are acknowledged. NREMT notified the public that it would cease issuing the I99 certification in 2011. The organization gave three renewal cycles—until 2018—for I99 holders to become paramedics or to cease I99 practice. Montana currently has 32 licensees with I99 endorsement. Because the endorsement is no longer issued, it is impossible for this number to increase. As retirements occur, the number will continue to reduce. As a result, maintenance of I99 endorsement is not a feasible or viable long-term solution for access to care in rural Montana or elsewhere. Nonetheless, the board will not, at the present time, remove recognition of the I99 endorsement. The amendment to the proposal is set forth below.

COMMENT 2: One commenter objected to the proposed amendment to ARM 24.156.405(2)(n). The commenter suggested involuntary loss of privileges may not warrant discipline as unprofessional conduct. The commenter suggested that only an involuntary loss of privileges exceeding 30 days be defined as unprofessional conduct. The commenter further objected to the reasonable necessity statement.

RESPONSE 2: The comment is acknowledged, and the board agrees. The rule is amended as set forth below.

COMMENT 3: One commenter suggested that physician assistant statutes had been omitted from authorizing and implementing citations throughout the rules package and should be reviewed.

RESPONSE 3: The board agrees. The omission is an administrative oversight and can be corrected here. Applicable amendments are set forth below.

4. The agency has amended ARM 24.156.401, 24.156.409, 24.156.612, 24.156.613, 24.156.615, 24.156.617, and 24.156.2711 as proposed.

5. The agency has adopted New Rule I (24.156.406) as proposed.

6. The agency has repealed ARM 24.156.415, 24.156.604, 24.156.608, 24.156.609, 24.156.616, 24.156.628, 24.156.801, and 24.156.2715 as proposed.

7. The agency has amended ARM 24.156.403, 24.156.405, 24.156.450, and 24.156.2751 with the following changes from the original proposal, stricken matter interlined, new matter underlined:

24.156.403 DEFINITIONS AND ABBREVIATIONS (1) and (2) remain as proposed.

AUTH: 37-1-131, 37-3-203, 37-3-301, 37-3-802, 37-20-202, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-3-102, 37-3-201, 37-3-203, 37-3-301, 37-3-305, 37-3-307, 37-3-325, 37-3-326, 37-3-802, 37-3-804, 37-20-203, 37-25-201, 37-25-302, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

24.156.405 UNPROFESSIONAL CONDUCT (1) through (2)(m) remain as proposed.

(n) for physicians and physician assistants, involuntary loss of or failure to report to the board any involuntary loss of privileges, which exceeds 30 days, within 30 days.

AUTH: 37-1-131, 37-1-319, 37-3-202, 37-6-106, 37-20-202, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-3-323, 37-3-401, 37-3-405, 37-6-311, 37-20-202, 37-20-403, 37-20-404, 37-25-201, 50-6-203, MCA

24.156.450 MANAGEMENT OF INFECTIOUS WASTES (1) and (2) remain as proposed.

AUTH: 37-1-131, 37-3-203, 37-6-106, 37-20-202, 37-25-201, 50-6-203 75-10-1006, MCA

IMP: 37-1-131, 50-6-203, 75-10-1006, MCA

24.156.2751 LEVELS OF ECP LICENSURE INCLUDING ENDORSEMENTS

(1) through (1)(c)(i) remain as proposed.

(ii) AEMT-99;

(ii) and (iii) remain as proposed but are renumbered (iii) and (iv).

(d) remains as proposed.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON

Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.156.630 and 24.156.635 and) REPEAL
the repeal of ARM 24.156.632,)
24.156.633, 24.156.634, 24.156.636,)
and 24.156.637 pertaining to Montana)
Health Corps)

TO: All Concerned Persons

1. On August 25, 2023, the Board of Medical Examiners (agency) published MAR Notice No. 24-156-96 regarding the public hearing on the proposed changes to the above-stated rules, at page 828 of the 2023 Montana Administrative Register, Issue No. 16.

2. On September 15, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: A commenter stated that they supported generally the rulemaking.

RESPONSE 1: The comment is acknowledged.

COMMENT 2: A commenter opposed the amendment striking ARM 24.156.635(6) pertaining to the maintenance of medical records. The commenter suggested that the rule was necessary to provide clarity about recordkeeping requirements, particularly for health corps volunteers from out of state.

RESPONSE 2: The board disagrees with the comment. Health Corps volunteers are fully licensed, practicing physicians. They are subject to identical requirements as any other physician practicing in Montana while performing services under the Health Corps Act. Retaining ARM 24.156.635(6) furthers an ambiguity in law, by restating a single unprofessional conduct rule for the Health Corps, implying that other unprofessional conduct rules might not apply. As proposed, and explained in the statement of reasonable necessity, unprofessional conduct rules apply universally to licensees practicing in Montana. It is incumbent on licensees, whether practicing in Montana regularly, or for a short period, to be familiar with our laws and rules. Failure properly to maintain patient records as required may subject the licensee to disciplinary action by this board.

4. The agency has amended ARM 24.156.630 and 24.156.635 as proposed.

5. The agency has repealed ARM 24.156.632, 24.156.633, 24.156.634, 24.156.636, and 24.156.637 as proposed.

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through V pertaining to)
pediatric complex care assistant)
license)

TO: All Concerned Persons

1. On August 25, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-160-1 regarding the public hearing on the proposed adoption of the above-stated rules, at page 833 of the 2023 Montana Administrative Register, Issue No. 16.

2. On September 15, 2023, a public hearing was held on the proposed adoption of the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: The department received several comments that NEW RULE II, pertaining to certification of training for PCCA licensees, should provide for certification by specialists and others well-qualified to ensure appropriate training for specific skills by the licensees.

RESPONSE 1: The department agrees with the comment, and amends the proposal below.

COMMENT 2: A commenter requested that the department ensure licensure fees are minimized.

RESPONSE 2: The department acknowledges the request. The fees are minimal.

COMMENT 3: A commenter requested clarity that CNA duties would be included in the scope of practice for PCCA licensees.

RESPONSE 3: The comment is noted. House Bill 449, Section 1(4)(b)(i) states that duties equivalent to a certified nursing assistant may be performed by a PCCA licensee. Further clarification in rule is not necessary.

4. The agency has adopted NEW RULE III (24.160.501), NEW RULE IV (24.160.401), and NEW RULE V (24.160.2301) as proposed.

5. The agency has adopted NEW RULES I and II with the following changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (24.160.301) DEFINITIONS (1) remains as proposed.
(2) "Medical provider" includes a primary care provider and specialist care providers.

AUTH: [House Bill 449, Section 1], [House Bill 449, Section 2]

IMP: [House Bill 449, Section 1], [House Bill 449, Section 2]

NEW RULE II (24.160.505) TRAINING PROGRAM (1) remains as proposed.

(a) the ~~primary care~~ medical provider of the individual for whom the licensee will provide care; or

(b) through (3) remain as proposed.

AUTH: [House Bill 449, Section 1], [House Bill 449, Section 2]

IMP: [House Bill 449, Section 1], [House Bill 449, Section 2]

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON

Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known
Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2023. This table includes notices in which those rules adopted during the period April 28, 2023, through October 6, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-59-639	Bank Semiannual Assessments, p. 599, 869
2-59-640	Renewal Fees of Mortgage Brokers, Mortgage Lenders, Mortgage Servicers, and Mortgage Loan Originators, p. 602, 870

(Public Employees' Retirement Board)

2-43-634	Amendment by Reference of the State of Montana Public Employee Deferred Compensation (457) Plan Document and Trust Agreement, p. 165, 401
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(Montana Tax Appeal Board)

2-51-629	Model Procedural Rules - Orders of the Board - Decision by the Board, p. 596, 868
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AGRICULTURE, Department of, Title 4

4-23-277	Nonrefundable Application Fees, p. 923
4-23-279	Annual Report and Assessment Fees, p. 925
4-23-280	State Grain Lab Fee Schedule, p. 927

STATE AUDITOR, Office of, Title 6

- 6-275 Approved Risk List, p. 317, 476
- 6-276 Fire Premium Allocation - Presumptively Reasonable Allocations, p. 460, 605, 871
- 6-277 Bail Bond Documents, p. 534, 872
- 6-278 Status of Carriers as Small Insurer Health Carriers, p. 608, 876
- 6-279 Classification Review Committee Agency Organization, Administrative Appeal of a Classification Decision, Telephone and Electronic Hearings, and Establishment, Deletion, or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability, p. 724, 1085
- 6-280 Continuing Education Program for Insurance Producers and Consultants, p. 778
- 6-281 Regulatory Sandbox Waivers, p. 782

COMMERCE, Department of, Title 8

- 8-94-201 Administration of the Montana Coal Endowment Program (MCEP) - Emergency Grants - Planning Grants, p. 370
- 8-94-204 Administration of the Montana Historic Preservation Grant (MHPG) Program, p. 1118
- 8-111-200 Public Participation - Incorporation of Model Rules - Meetings of the Board - Definitions, p. 200, 402
- 8-111-202 Board of Housing Temporary Assistance to Needy Families (TANF) and Coal Trust Multifamily Homes Loan Programs, p. 936
- 8-111-203 Administration of the Emergency Shelter Facility Grant (ESFG) Program, p. 949

EDUCATION, Title 10

(Board of Public Education)

- 10-55-290 Standards of Accreditation, p. 1966, 255, 403

(Office of Public Instruction)

- 10-75-101 Montana Indian Language Preservation Grants, p. 681, 1086

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-596 Closing the Bjornberg Bridge Fishing Access Site in Phillips County, p. 405, 449
- 12-597 Closing the Alkali Creek Fishing Access Site in Phillips County, p. 407, 450
- 12-598 Closing the Cree Crossing Wildlife Management Area on the Milk River in Phillips County, p. 409, 451
- 12-599 Closing the Truly Bridge Fishing Access Site in Cascade County, p. 477, 564

- 12-601 Partial Closure of the Jefferson River From the Williams Bridge Fishing Access Site to the Meridian Bridge in Jefferson County, p. 518
- 12-602 Closing the Alder Bridge Fishing Access Site on the Ruby River in Madison County, p. 520, 565
- 12-603 Public Use Rules of the Department of Fish, Wildlife and Parks Public Lands, p. 952
- 12-604 Closing the Rosebud Isle Fishing Access Site in Stillwater County, p. 667
- 12-605 Closing the Yellowstone River Near the Twin Bridges Road Railroad Bridge in Stillwater County, p. 669
- 12-608 Closing the Holmgren Ranch Fishing Access Site on the Yellowstone River in Stillwater County, p. 703
- 12-609 Partial Closure of the Marshall Creek Wildlife Management Area in Missoula County, p. 761
- 12-610 Partial Closure of the Flathead and Clark Fork Rivers in Sanders County, p. 877
- 12-611 Closing the Kookoosint Fishing Access Site in Sanders County, p. 880
- 12-612 Closing the Paradise Crossing Fishing Access Site in Sanders County, p. 882
- 12-613 Closing the Full Curl Wildlife Management Area in Sanders County, p. 884

(Fish and Wildlife Commission)

- 12-606 Brinkman Game Preserve, p. 611
- 12-614 Grizzly Bears, p. 1043
- 12-615 Control Methods of the Gray Wolf Include Nonlethal and Legal Means, p. 1121

(State Parks and Recreation Board)

- 12-607 Smith River Bonus Point Permit System, p. 976

GOVERNOR, Office of the, Title 14

- 14-8 Sage Grouse Habitat Quantification Tool Designation, p. 1123

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-429 Modernizing Application and Notice Requirements - Allowing for Electronic-Only Submittal and Use of Modern Mapping Technologies - Eliminating Requirements Related to Temporary Construction Camps - General Housekeeping Updates, p. 373, 764
- 17-430 Review of Sanitation Facilities in Subdivisions Such as Water Wells, Onsite Sewage Disposal Systems and Stormwater Amenities - Amendment to Circular DEQ-4 and Circular DEQ-20, p. 786
- 17-431 Incorporation by Reference of the Most Recent Version of the Montana Ambient Air Monitoring Program Quality Assurance Project Plan (QAPP), p. 806

- 17-432A Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1050
- 17-432B Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1125
- 17-432C Transfer of Rulemaking Authority From the Board of Environmental Review to the Department of Environmental Quality, p. 1136

TRANSPORTATION, Department of, Title 18

- 18-190 Motor Carrier Services Safety Requirements, p. 389, 566
- 18-191 Alternative Project Delivery Methods, p. 503, 705
- 18-192 Utility and Eligible Project Right-of-Way Occupancy, p. 613, 1012
- 18-193 Fuel Tax Bridge and Road Safety and Accountability Program, p. 463, 706
- 18-194 Refunds of Gasoline and Special Fuel Tax, p. 466, 671
- 18-195 Tax on Electric Vehicle Charging Stations, p. 809, 1186
- 18-196 Overdimensional Permit Requirements, p. 980

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

- 23-3-268 Alcohol Analysis, p. 206, 411
- 23-3-272 Driver Licensing and Licensing Operators of Commercial Motor Vehicles, p. 506, 766
- 23-3-273 Licensing Operations of Commercial Motor Vehicles, p. 728, 1089
- 23-4-267 Drug and/or Alcohol Analysis, p. 168, 413
- 23-12-274 Criminal History Information Provided by the Department to Qualified Entities, p. 1072
- 23-12-275 Montana Law Enforcement Academy, p. 1090

(Public Safety Officers Standards and Training Council)

- 23-13-269 Certification of Public Safety Officers, p. 174, 479

(Board of Crime Control)

- 23-14-271 Board of Crime Control, p. 392, 567

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-12-405 Displaced Homemaker Program, p. 537, 767
- 24-22-400 Incumbent Worker Training, p. 223, 568
- 24-23-404 Job Growth Incentive Tax Credit, p. 511, 769
- 24-29-399 Workers' Compensation Medical Fee Schedule, p. 319, 522

- 24-29-403 Utilization and Treatment Guidelines - Drug Formulary for Workers' Compensation Purposes, p. 398, 523
- 24-101-406 Renewal Dates and Requirements, p. 733, 1092
- 24-150-42 Licensed Hearing Aid Dispenser Program, p. 984
- 24-160-1 Pediatric Complex Care Assistant License, p. 833
- 24-182-36 Board of Private Security, p. 836

(Alternative Health Care Board)

- 24-111-28 Midwife Prescribing, p. 542, 886
- 24-111-29 Acupuncturist Licensing, p. 738, 1093, 1187

(Board of Medical Examiners)

- 24-156-94 Physician Assistants, p. 813, 1149
- 24-156-95 General Revisions, p. 819
- 24-156-96 Montana Health Corps, p. 828

(Board of Nursing)

- 24-159-93 Continuing Education, p. 560
- 24-159-94 Informational Notice of Proposed Rulemaking - Proposed 2023 Rulemaking by the Interstate Commission of Nurse Licensure Compact Administrators, p. 483
- 24-159-95 Board of Nursing, p. 747

(Board of Optometry)

- 24-168-45 General Revisions, p. 994

(Board of Real Estate Appraisers)

- 24-207-47 Fees - Practical Application of Real Estate Appraisal, p. 754, 1095

LIVESTOCK, Department of, Title 32

- 32-23-336 Department of Livestock Meat Inspection and Milk and Egg Bureau Fees, p. 226, 452
- 32-23-338 Issuance of Permits, p. 688, 1189
- 32-23-339 Diagnostic Laboratory Fees, p. 690, 1190
- 32-23-340 Records to Be Kept, p. 860

MILITARY AFFAIRS, Department of, Title 34

- 34-11 Application of Reimbursement for Service Members' Group Life Insurance Premiums, p. 863, 1191

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-22-217 Bitterroot Valley Sanitary Landfill Controlled Groundwater Area, p. 514, 1018
- 36-22-218 Navigable Waterways, p. 758

36-22-219 Water Right Permitting, p. 1151

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-1006 Low Income Home Energy Assistance Program (LIHEAP), p. 228, 480
- 37-1011 Food Distribution Program on Indian Reservations, p. 245, 481
- 37-1017 Emergency Medical Services, p. 620, 1020
- 37-1023 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 252, 482
- 37-1024 Medicaid Coverage of Abortion Services, p. 2353, 414
- 37-1025 Developmental Disabilities Program Incident Reporting and Handling, p. 865
- 37-1026 Trauma Facility Designation, p. 1001
- 37-1028 Applied Behavior Analysis Services, p. 468, 902
- 37-1029 Increase of Laboratory Fees, p. 1007
- 37-1030 Hospice Reimbursement, p. 472, 672
- 37-1033 Chemical Dependency Programs - Medicaid Mental Health Services, p. 693
- 37-1035 Medicaid Home and Community-Based Services Program, p. 643
- 37-1036 Developmental Disabilities Program Reimbursement for Services, p. 698, 1023
- 37-1037 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 646, 1025
- 37-1038 Nursing Facility Reimbursement, p. 663, 1032

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-3-250 Deregulation of Class C Motor Carriers in Montana's Motor Carrier Act, p. 1076
- 38-5-260 Construction of Utility Lines and Facilities, p. 152, 322, 524
- 38-5-261 Optional Filing Standards for Electric, Gas, Water, and Sewer Utilities, p. 1183

REVENUE, Department of, Title 42

- 42-1066 Montana Marijuana Regulation and Taxation Act (Title 16, chapter 12, MCA) - Marijuana Testing Laboratory Licensees, p. 570
- 42-1067 Property Tax Abatements for Gray Water Systems, p. 1010

SECRETARY OF STATE, Office of, Title 44

- 44-2-264 Business Services Annual Report Filing Fee Waiver in 2024, p. 9, 525
- 44-2-265 Third-Party Testing of Voting Systems, p. 1082

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in September 2023 appear. Potential vacancies from November 1, 2023 through November 30, 2023, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 2023.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Outfitters			
Mr. Ernest Barker	Governor	Arnaud	9/11/2023
Augusta			6/30/2024
Qualifications (if required): Outfitter for hunting and fishing with knowledge in government permitting			
Mr. Matthew Greemore	Governor	Reappointed	9/11/2023
Twin Bridges			6/30/2025
Qualifications (if required): Outfitter for fishing			
Mr. John Way	Governor	Reappointed	9/11/2023
Ennis			6/30/2026
Qualifications (if required): Outfitter licensed for hunting and fishing			
Montana Agriculture Development Council			
Mr. Dean Folkvord	Governor	Hanson	9/11/2023
Three Forks			7/1/2026
Qualifications (if required): Actively engaged in agriculture			
Mrs. Megan Hedges	Governor	Reappointed	9/11/2023
Chester			7/1/2026
Qualifications (if required): Actively engaged in agriculture			

EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2023

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Digital Academy			
Ms. Kara Edgar	Governor	New	9/5/2023
Gallatin Gateway			12/31/2028
Qualifications (if required): School District Trustee - serves at pleasure of the Governor			
Montana Pulse Crop Committee			
Mr. Blaine Juedeman	Governor	Streit	9/11/2023
Geraldine			7/1/2025
Qualifications (if required): Western District Rep			
Mr. Jeffrey Winkler	Governor	New	9/11/2023
Ft. Benton			7/1/2025
Qualifications (if required): Operates Collection Facility that Purchases Pulses			

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2023 THROUGH NOVEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Trauma Care Committee		
Ms. Joy Fortin, Kalispell Qualifications (if required): Member of the Montana Trauma Coordinators	Governor	11/1/2023
Mr. Clinton Loss, Helena Qualifications (if required): Member of the Montana Emergency Medical Services Association	Governor	11/1/2023
Dr. Whitney Gum, Billings Qualifications (if required): Member of the American College of Emergency Physicians, Montana Chapter	Governor	11/1/2023
Mr. Christopher Benton, Red Lodge Qualifications (if required): Central Region Trauma Care Advisory Committee	Governor	11/1/2023
Ms. Sara Lynn Bonanini, Saint Xavier Qualifications (if required): Nurse or Physician representing Indian Health Service	Governor	11/1/2023
Dr. Chad Engan, Great Falls Qualifications (if required): Central Regional Trauma Care Advisory Committee	Governor	11/1/2023
Mrs. Lisa Diane Foley, Billings Qualifications (if required): Member of the Emergency Nurses Association	Governor	11/1/2023
Dr. Barry McKenzie, Billings Qualifications (if required): Presiding Officer	Governor	11/1/2023
Dr. Frank Raiser, Butte Qualifications (if required): Western Region Trauma Care Advisory Committee	Governor	11/1/2023

EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2023 THROUGH NOVEMBER 30, 2023

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Trauma Care Committee Cont. Mr. Donald Whalen, Missoula Qualifications (if required): Individual employed by a Montana private ambulance operator	Governor	11/1/2023

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